



3 1761 04020 4760

1923

ONTARIO LIQUOR TRAFFIC LAWS

BEING

THE ONTARIO TEMPERANCE ACT,  
WITH AMENDMENTS—1922,

BY

J. C. McRUER

ASSISTANT COUNTY CROWN ATTORNEY

CANADA LAW BOOK CO., LIMITED  
TORONTO



Bequeathed to  
**The Library**  
of the  
**University of Toronto**  
by  
the late  
**Hon. Mr. Justice Armour**  
for many years  
a Member of the Board of  
Governors of the University

FOR THE CROWN ATTORNEY  
OF THE CITY OF TORONTO AND THE  
COUNTY OF YORK

1870  
MAY 10 1870  
NEW YORK

NEW YORK

GROWN ATTORNEY  
FOR THE CITY OF TORONTO AND THE  
COUNTY OF YORK.

THE  
ONTARIO LIQUOR LAWS

THE ONTARIO TEMPERANCE ACT

AND ASSOCIATED ACTS

WITH ANNOTATIONS

THE ONTARIO LIQUOR LAWS

AND ASSOCIATED ACTS

AS AMENDED BY THE STATUTES IN  
FORCE OF THE ACTS RESPECTING THE  
LIQUOR TRAFFIC IN ONTARIO

CANADA LAW BOOK COMPANY, LTD.

100 KING STREET WEST

TORONTO

THE ONTARIO LEGISLATIVE COUNCIL  
PRINTED BY THE GOVERNMENT OF ONTARIO  
1954

THE ONTARIO LIQUOR LAWS

1174674

FOR THE CITY OF TORONTO AND THE COUNTY OF YORK.  
CROWN ATTORNEY

TABLE OF CASES CITED  
**THE  
ONTARIO LIQUOR LAWS**

BEING

**THE ONTARIO TEMPERANCE ACT**

AND AMENDING ACTS 1916 TO 1922.

WITH ANNOTATIONS

JAMES  
McRuer  
J. C. McRUER,

BARRISTER-AT-LAW, OSGOODE HALL, TORONTO.

SUPPLEMENTED BY THE DOMINION AND  
PROVINCIAL ACTS AFFECTING THE  
LIQUOR TRAFFIC IN ONTARIO.

311726  
13. 2. 35-

**CANADA LAW BOOK COMPANY, LTD.**

84 BAY ST., TORONTO,

1922.

UNIVERSITY OF TORONTO LIBRARY  
130 St. George Street  
Toronto, Ontario

11/11/22

THE  
ONTARIO LIQUOR LAWS

1922

THE ONTARIO TEMPERANCE ACT



AND AMENDING ACTS 1904 TO 1922

WITH ANNOTATIONS

J. C. McRuer

Copyright (Canada) 1922, by J. C. McRuer.

PRINTED BY THE BOOKING AND  
STATIONERY DEPARTMENT OF THE  
GOVERNMENT OF ONTARIO

CANADA LAW BOOK COMPANY, LTD.

1111 BAY ST. TORONTO

1922



## TABLE OF CASES CITED

---

Axler	R. v. Sec. 2 (8) 88, 125.
Baird	R. v. Sec. 41.
Barry	R. v. Sec. 70.
Belanger	R. v. Sec. 70.
Bender	R. v. Sec. 70.
Berlin Lion Brewery Ltd.,	Sec. 96, 97.
Bierenholtz	R. v. Sec. 2 (f), 40.
Boileau	R. v. Sec. 2 (e) 3, 4, 5, 6, 7, 13, 33, 58, 61, 81, 115, 146.
Bondy	R. v. Sec. 40.
Bracci	R. v. Sec. 40.
Carswell	R. v. Sec. 2 (i) 11, 41.
Chappus	R. v. Sec. 41.
Collina	R. v. Sec. 40, 66, 88.
Condola	R. v. Sec. 41.
Coote	R. v. Sec. 72, 96.
Cramer	R. v. Sec. 43, 41, 84.
De Angelis	R. v. Sec. 40, 58, 102a.
Denny	R. v. Sec. 92.
Donihee	R. v. Sec. 40.
Drury	R. v. Sec. 40.
Faulkner	R. v. Sec. 41, 78, 88, 102.
Fields R.	R. v. Sec. 40, 41, 88, 98.
Fleming v. Spracklin,	Sec. 66, 67.
Forton R.	R. v. Sec. 2 (f), 41.
Goldman	R. v. Sec. 54.
Gold Seal Ltd. v. Dom. Express Co.,	Sec. 139.
Gosling	R. v. Sec. 67, 88.
Graham and Strong v. Dominion Express Co.,	Sec. 46, 139.
Grassi	R. v. Sec. 40, 72.
Gulex	R. v. Sec. 2 (i), 41.
Hagen	R. v. Sec. 41, 58.
Hanley	R. v. Sec. 41, 55, 72, 96.
Harris	R. v. Sec. 40, 67, 72, 88.
Hayton	R. v. Sec. 2 (f), 41, 72.
Helpert	R. v. Sec. 41, 96.

In re Sault Ste Marie Prov. Election, Sec. 67.

Johnston R. v. Sec. 40, 41, 58, 72, 96, 98, 102.

Kallas R. v. Sec. 78, 88.

Kaplan R. v. Sec. 41, 61, 76, 78, 98, 102.

Korluck R. v. Sec. 88, 102a.

Kozak R. v. Sec. 43, 41, 88.

Lake R. v. Sec. 40.

Leach R. v. Sec. 74.

Le Clair R. v. Sec. 40, 67, 70, 88.

Leduc R. v. Sec. 41, 85, 88, 98, 102.

Le Maire R. v. Sec. 40, 88, 139.

Maker R. v. Sec. 2 (i) (ii), 41, 84.

Makin v. Atty. Gen. N. S. W., Sec. 51.

Mark Park R. v. Sec. 2 (i), 41.

Martel R. v. Sec. 2 (i), 41, 102a.

Martin R. v. Sec. 41, 58, 72, 95, 102.

McCranor R. v. Sec. 40, 92.

McDewitt R. v. Sec. 74, 96.

McDonald R. v. Sec. 66, 67, 102a.

McEvoy R. v. Sec. 139.

McEwan R. v. Sec. 49.

McFarline R. v. Sec. 40, 49.

McGonegal R. v. Sec. 43.

McKay R. v. Sec. 40, 84, 88, 102.

McKenzie R. v. No. (1) & No. (2) 40.

McLaren R. v. Sec. 51.

Melvin R. v. Sec. 41, 88.

Mercier R. v. Sec. 41, 96, 98.

Merritt R. v. Sec. 96.

Mooney R. v. Sec. 40, 88.

Moore R. v. Sec. 41.

Moore R. v. Sec. 96.

National Trust Co. v. Honnen, Sec. 145.

Nazareno R. v. Sec. 40, 88.

Nealon R. v. Sec. 41.

Newton R. v. Sec. 43, 41, 98, 102a.

O'Donnell R. v. Sec. 41.

Ollman R. v. Sec. 84.

Perron	R. v. Sec. 41, 72.
Powell	R. v. Sec. 40, 58.
Punnett	R. v. Sec. 40, 88.
Purdy	R. v. Sec. 2 (i) (1), 41.
Rankin	R. v. Sec. 51.
Re Cherniak and College of Physicians & Surgeons of Ont.,	Sec. 51.
Renauds Application,	Sec. 70.
Riddell	R. v. Sec. 40, 67.
Robins	R. v. Sec. 40, 58, 96, 98, 102.
Rosani	R. v. Sec. 41, 88.
Sakalov	R. v. Sec. 40, 88, 102a.
Sequin	R. v. Sec. 96.
Slew	R. v. Sec. 41.
Smith	R. v. Sec. 2 (i) (1), 41, 88.
Soo Tong	R. v. Sec. 40.
Sova	R. v. Sec. 58.
Tereschuk	R. v. Sec. 2 (1), 41.
Thorburn	R. v. Sec. 140.
Toyne	R. v. Sec. 139.
Tugman	R. v. Sec. 41, 72, 88.
WarneDrugCo.	R. v. Sec. 40, 85, 88, 124, 125.
Welford	R. v. Sec. 41.
Williams	R. v. Sec. 41, 85.



## ERRATA

---

- Page 6. 13th line from bottom, *for* "or" *read* "of."
- Page 45. 11th line from top, *for* "or such house" *read* "of such house."
- Page 46. 9th line from bottom, *for* "or" *read* "of."
- Page 59. 9th line from bottom, *add* to end of line "359."
- Page 103. 3rd line from top, *for* "of" *read* "or."
- Page 103. 10th line from top, *for* "his Act" *read* "this Act."
- Page 119. 6th line from top, *for* "or" *read* "of."
- Page 186. 23rd line from top, *add* at end of line, "130 (1)."
- Page 186. 24th line from top, *add* at end of line "130 (2)."



An Act intituled The Ontario Temperance Act

*Assented to 27th April, 1916.*

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

SHORT TITLE.

1. This Act may be cited as *The Ontario Temperance Act*, 1916, c. 50, s. 1.

INTERPRETATION.

2. In this Act,

Interpre-  
tation.

(a) "Board" shall mean the Board of License Commissioners to be appointed under this Act;

"Board."

(b) "Vendor's license" shall mean a license authorizing a person, firm or incorporated company to sell subject to the provisions of this Act in the warehouse or store in which such person, firm or incorporated company carry on business alcohol and other liquors to such persons as are entitled to purchase the same;

"Vendor's  
license."

(c) "Inspector" shall mean and include a Provincial Inspector and a local inspector appointed under this Act;

"Inspector"

(d) "Licensed premises" shall mean the warehouse or store in respect of which a license under this Act has been granted, and is in force, and shall include every room, closet, cellar, yard, stable, outhouse, shed and any other place whatsoever, of, belonging or in any manner appertaining to such warehouse or store; 1916, c. 50, s. 2. (a) —(d).

"Licensed  
premises."

"Licensee."

- (e) "Licensee" shall mean a person holding a license under this Act for the sale of liquor, and "Vendor" shall have the same meaning. 1916, c. 50, s. 2 (e); 1917, c. 50, s. 2.

Licensee as referred to in the Act is one to whom a license is granted under secs. 3 to 6 of the Act and not the keeper of a standard hotel to whom a license has been granted, under sec. 146. A license granted under secs. 3 to 6 is a license *in personam* while a license granted under sec. 146 is a license *in rem*. R. v. Boileau (1917), 36 D.L.R. 781, 28 Can. Cr. Cas. 144, 38 O.L.R. 607.

"License,"  
meaning of.

- (ee) "License," unless otherwise expressed, shall mean a license for the sale of liquor. 1917, c. 50, s. 2.

"Liquor,"  
"liquors,"

- (f) "Liquor" or "Liquors," unless otherwise expressed, shall include alcohol and all fermented, spirituous and malt liquors, and combinations of liquors, and drinks and drinkable liquids which are intoxicating, and any liquor which contains more than  $2\frac{1}{2}$  per cent. of proof spirits shall be conclusively deemed to be intoxicating. 1916, c. 50, s. 2 (f); 1917, c. 50, s. 3.

When the word "liquor" is used in giving evidence on a prosecution under a section using the word in the special sense given to it by sec. 2, sub-sec. (f) it may be assumed that the word is used by the witness in that sense unless this inference is displaced on cross examination. R. v. Foxton (1920), 34 Can. Cr. Cas. 9; 48 O.L.R. 207. It is however of utmost importance to prove on all prosecutions that the liquor in question is intoxicating within the meaning of this sub-section, and for this purpose a certificate of the Government analyst under sec. 90



of the Act should always be obtained when there is any reason for doubt.

The labels on bottles or boxes may be some evidence of their contents, if supported by other evidence, *R. v. Bierenholtz* (1921), 36 Can. Cr. Cas. 199, 20 O.W.N. 233; but such evidence is not sufficient if unsupported. *R. v. Hayton* (1920), 57 D.L.R. 532, 35 Can. Cr. Cas. 193, 48 O.L.R. 494; Sec. 2 (f) referred to in *R. v. Axler* (1917), 40 O.L.R. 304.

- (g) "Local Inspector" shall mean an inspector appointed under this Act for a county or other locality. 1916, c. 50, s. 2 (g); 1917, c. 50, s. 4. "Local Inspector."
- (h) "Manufacturer of native wines" shall mean manufacturer of native wines from grapes grown and produced in Ontario, who has complied with any regulations or restrictions made or passed by the Board; 1916, c. 50, s. 2 (h). "Manufacturer of native wines." •
- (i) "Private dwelling house" shall mean a separate dwelling with a separate door for ingress and egress, and actually and exclusively occupied and used as a private residence; but "Private dwelling house."

"Actually and exclusively occupied and used as a private residence" refers to the residential character of the place and does not demand actual physical occupancy, *R. v. Mark Park* (1920), 61 D.L.R. 468, 48 O.L.R. 623, 34 Can. Cr. Cas. 203. Thus a man may have two private residences within the meanings of the Act, a summer home and a winter home; or a house he has purchased with the intention of occupying and the one he still occupies.

A railway car occupied by four men has been held not to be a private dwelling house within

GROWN ATTORNEYS  
 OF THE CITY OF TORONTO AND  
 COUNTY OF YORK

the meaning of the Act. *R. v. Gulex* (1917), 39 O.L.R. 529, 28 Can. Cr. Cas. 261. Sec. 2 (i) referred to in *R. v. Tereschuk* (1917), 17 O.W.N. 281.

Certain  
places not  
to be  
deemed.

- (i) Without restricting the generality of the above definition of a private dwelling house but subject to the proviso hereinafter mentioned among other things which the expression "private dwelling house" does not include or mean, it shall not include or mean and shall not be construed to include or mean any house or building occupied or used or partially occupied or used as an office, other than a duly registered physician's, dentist's, or veterinary surgeon's office, or as a shop, or as a place of business, or as a factory, or as a workshop, or as a warehouse, or as a clubhouse, or club room, public hall or hall of any society or order, or as a boarding house, or a lodging house where there are more than three lodgers or boarders other than the members of the family, or as a livery stable or garage, or as an inn, tavern, hotel or other house or place of public entertainment or any house or building the rooms or compartments in which are leased to different persons, or any building or house mentioned in section 54 of this Act, or any house or building where for money or other valuable consideration any goods or chattels are kept for sale or sold, or meals given or lodging provided, nor shall it include or mean or be construed to include or mean any house or building connected by a doorway or covered passage or way of internal communication, except by telephone, with any place where liquor is authorized to be sold under this Act, or with any office, except a duly registered physician's, dentist's or veterinary

surgeon's office, or with any place of business, factory, warehouse, workshop, clubhouse, club-room, hall before mentioned, boarding house or lodging house as aforesaid, livery stable, garage, inn, tavern, hotel, or other house or place of public entertainment or resort or with any house or building mentioned in section 82 of this Act; Provided, however, that where the office, shop or place of business mentioned in this subdivision is on the ground floor of any building which above the ground is used exclusively for living apartments having no internal communication with the ground floor, such apartments, if the same contain facilities for cooking and a family actually residing, cooking, sleeping and taking their meals there, shall be regarded as a private dwelling house. 1916, c. 50, s. 2 (i); 1917, c. 50, s. 5; 1918, c. 40, s. 3.

Apartments over a place of business on the ground floor are excepted from the operation of this sub-section by the provisions contained in the last sentence of the sub-section, with the condition that there be no internal communication between the apartments and the ground floor. This exception does not apply in favour of an apartment on the ground floor under a place of business, shop or office as mentioned in the section, although there be no internal communication between the apartment and the place of business. *R. v. Purdy* (1917), 41 O.L.R. 49.

It would also appear on a strict reading of this sub-section that "the place of business" must necessarily be on the ground floor, and an office, shop, or place of business on the second, or third floors of a block of apartments would cause all the apartments in the block to lose their

character as private dwellings.

One apartment of a duplex house is a private dwelling within the meaning of the Act. *R. v. Carswell* (1918), 43 D.L.R. 715, 30 Can. Cr. Cas. 282, 42 O.L.R. 34. Sec. 2 (i) (i) referred to in *R. v. Smith* (1920), 18 O.W.N. 220. *R. v. Martel* (1920), 35 Can. Cr. Cas. 105, 48 O.L.R. 347.

Proviso

- (ii) Notwithstanding the above restrictions "private dwelling house" shall include also a suite of rooms in an apartment block, separated and closed off by walls from all other rooms in such block, and without any door or opening whereby communication may be had with any other rooms, save doors opening into a main or common hall, leading with or without stairs into a street or lane; and in which suite there are facilities for cooking, and a family actually residing, cooking, sleeping and taking their meals; 1916, c. 50, s. 2 (i) sub. cl. (ii); 1921, c. 73, s. 2.

Where the defendant was an unmarried man occupying a suite or rooms in an apartment house, where he slept and had breakfast and dinner which were prepared by a woman who came in for that purpose, it was held that the words "and a family actually residing" brought the defendant's apartment within this sub-section. Separate apartments on the ground floor, under one roof between which there is no internal communication comes within the provisions of this sub-section. *R. v. Maker* (1920), 54 D.L.R. 684, 35 Can. Cr. Cas. 130, 48 O.L.R. 182.

- (iii) The words "apartment block" used in paragraph (ii) shall include a building commonly designated as "apartment house" and complying with the requirements in said paragraph set out, but the use of the ground floor or some part thereof of such building for business purposes shall not be deemed to affect the character of such building as an apartment house provided there is no internal communication by stairway or otherwise between the portion used for business purposes and any other part of the building above the ground floor. 1918, c. 40, s. 2. Definitions of private dwelling-house in apartment block.
- (j) "Regulations" shall mean regulations made by the Lieutenant-Governor in Council under the authority of this Act; "Regulations."
- (k) "Sale" shall include exchange, barter, and traffic; "Sale."
- (l) "Minister" shall mean the member of the Executive Council to whom, for the time being, is assigned the supervision of the administration of this Act; "Minister."
- (m) "Magistrate" shall include a justice of the peace, two or more justices of the peace sitting and acting together, and a police magistrate; "Magistrate."
- (n) "Druggist" shall mean a duly qualified and registered pharmaceutical chemist. 1916, c. 50, s. 2 j—n. "Druggist."

*NOTE.—The following sections referring to Vendor's Licenses are superseded practically by the enactment of 1919 c. 60 which authorized the purchase of vendor's stocks and the sale of liquor directly by the Board, but as these sections were not expressly repealed they are retained in their place for the present.*

## LICENSES

Form and effect of licenses.

3. Vendor's licenses, written or printed or partly written and partly printed on stamped paper, may be issued subject to the provisions and in the form provided for by schedule A of this Act. 1916, c. 50, s. 3.

Term of license.

4. All licenses issued under this Act shall be signed by the Minister, and countersigned by the chairman or some other member of the Board, and shall continue in force to and inclusive of the 30th day of April next following the date thereof. 1916, c. 50, s. 4.

Operation of license.

5. Subject to the provisions of this Act as to removals and the transfer of licenses, every license for the sale of liquor shall be held to be a license only to the person therein named and for the warehouse or store therein mentioned, and shall remain valid only as long as such person continues to be the occupant of the said premises and the true owner of the business there carried on. 1916, c. 50, s. 5.

Discretion of Board.

6. (1) The granting or refusing of a license shall be absolutely in the discretion of the Board, and the Board may at any time cancel a license for any cause which it deems sufficient, and shall not be bound to assign any cause for such cancellation.

(2) All permits the issue of which is authorized by this Act may be issued by the Board. 1916, c. 50, s. 6.

Appointment of persons who may import for lawful purposes.

\*\*6a. The Board of License Commissioners for Ontario may appoint the present vendors or such other persons as may appear desirable for the purpose of importing into this province under the provisions of any statute of Canada or any Order-in-Council passed thereunder:

- (a) Wine for use in Divine Service;
- (b) Intoxicating liquor for medicinal purposes;
- (c) Intoxicating liquor for manufacturing or commercial purposes other than for the manufacture or use thereof as a beverage, and

- (d) for such other purposes as are or may be permitted under any statute or order with authority to possess and use or deal in such wine or intoxicating liquor for such purposes and no other and subject to such other restrictions as the law imposes.

Such appointments may be made by resolution of the Board, a copy of which duly authenticated, shall be forthwith sent to the Minister of Customs at Ottawa for his information. The Board may also revoke any appointment so made, in which event a notice of such revocation shall be immediately sent to the aforesaid Minister. 1918, c. 40, s. 32.

*\*\*Numbered for convenience and should be referred to as 1918, c. 40, s. 32.*

7. Every licensee and every partner, clerk, servant or agent of a licensee who sells liquor in any other place or at any other time or in any other quantity, or who sells liquor otherwise than as authorized by the license, and by this Act, shall be guilty of an infraction of section 40. 1916, c. 50, s. 7; 1917, c. 50, s. 6.

Penalty for licensee selling except as authorized.

(NOTE.—*The following provisions relating to Government Dispensaries were enacted by The Ontario Temperance Amendment Act, 1919. 1919, c. 60.*)

1. This Act may be cited as *The Ontario Temperance Amendment Act, 1919. 1919, c. 60, page 345.*

2. The Board may buy liquors, and may sell such liquors to such persons as may lawfully purchase the same.

Board may deal in liquors.

3. (1) The Board may purchase, acquire and take over the stock of liquor owned by each of the vendors licensed to sell liquor under *The Ontario Temperance Act* or being in or upon the licensed premises of each of the said vendors.

Board may take over stocks of licensed vendors.

Inventory and evidence as to cost to be furnished by vendors.

(2) Each of the said vendors shall upon request in writing deliver to the Board a correct inventory or statement of the stock of liquors on hand held by him, including any liquor purchased prior to the delivery of such request and in actual transit at the time, together with a statement of prices paid for each item of liquor mentioned in such statement, and in every case in which such liquor has been purchased subject to a discount or rebate or allowance of any kind the same shall be correctly set forth in such statement. The cost of freight and transportation, if paid by the licensee, shall be added to the price paid for such liquors, and deemed to be part of the purchase price of such liquors. Should there be any part of the stock on hand the value of which cannot be determined as aforesaid, such other method of fixing its value shall be adopted as may be mutually agreed on by the vendor and the Board. Such inventory or statement shall be verified by a Statutory declaration of the licensee.

Board may acquire leases of licensed premises.

(3) The Board may acquire any existing lease of the licensed premises or may lease such premises and may enter into possession thereof and occupy the same, or the Board may without acquiring a lease of the demised premises, enter into possession thereof and occupy the same for such time as may be necessary to acquire other premises, paying a reasonable rent for the said licensed premises.

Purchase of fixtures and equipment.

(4) The Board may purchase any necessary fixtures or other equipment used by the vendor in carrying on such business at a price to be either mutually agreed on or determined by valuation of an appraiser to be agreed upon.

Notice of intention to purchase.

(5) If at any time the Board shall desire to purchase or acquire the whole or any part of the liquors in the hands of, on order by or in transit to a licensed vendor and the fixtures, furniture and equipment or any part of the same used by the vendor upon the licensed premises, it shall, with the approval of the Lieutenant-Governor in Council, give notice to the vendor of its intention to purchase or acquire the same, and thereafter the Board may take immediate possession of all liquors in the licensed premises, and shall without delay proceed to make an inventory of the same and shall pay the pur-



chase money therefor so soon as the price to be paid therefor has been ascertained.

(6) Notwithstanding anything herein contained the Board shall not be required to purchase any liquors, fixtures, equipment or other property not deemed desirable by the Board.

Board not bound to purchase.

4. The Board may with the consent of the Attorney-General be sued and may institute or defend proceedings in any Court of law or otherwise in the name of "The Board of License Commissioners for Ontario" as fully and effectually to all intents and purposes as though such Board were incorporated under such name or title and no such proceeding shall be taken against or in the names of the members of the Board, and no such proceedings shall abate by reason of any change in the membership of the Board by death, resignation or otherwise, but such proceedings may be continued as though such change had not been made.

Board may be sued and sue in name of office.

5. (1) The Board may, with the consent of the Lieutenant-Governor in Council, lease any building, lands and premises in Ontario which may be necessary for the proper conduct of the undertaking and business authorized by this Act.

Power to lease premises.

(2) The Board may establish and maintain a chief or head office in the City of Toronto and may, with the approval of the Lieutenant-Governor in Council, appoint such officers, clerks, servants and workmen as may be necessary for the management and conduct of the business of the Board and shall also, with such approval, fix the salary and remuneration to be paid to such officers, clerks, servants and workmen. The Board shall also, with the approval of the Lieutenant-Governor in Council, establish such sales agencies in the City of Toronto and at such other places in the Province as may be deemed necessary, and may employ such persons as may be necessary to carry on the business of the Board at such agencies.

Head office and sales agencies.

(3) The Board shall also establish and maintain a central warehouse or warehouses for the receipt of liquors in quantities and the distribution of the same to sales agencies.

Central warehouse.

Rules and regulations.

6. The Board may, with the approval of the Lieutenant-Governor in Council, make rules and regulations respecting:

- (1) The conduct of the business of the Board and its agencies;
- (2) The buying of liquors to be supplied to such agencies;
- (3) The hours during which such agencies shall remain open;
- (4) The proper accounting for the moneys received at such agencies;
- (5) The making of inventories of the stock of liquor on hand from time to time;
- (6) The quality of the liquor supplied to the public on medical prescriptions and the prices to be charged therefor;
- (7) Such other purposes as may be deemed necessary or expedient.

Books of account and records.

7. (1) The Board shall keep such books of account and records as shall from time to time be required by the Minister or the Lieutenant-Governor in Council and shall cause to be entered therein all sums of money received and paid out by the Board and the several purposes for which the same are received and paid out.

Annual report.

(2) The Board shall also on or before the first day of February in each year make to the Minister an annual report containing such information as the Minister may from time to time require or direct.

Extension of licenses.

8. The Board may by resolution extend the duration of any existing license for any time not exceeding one month from the first day of May, 1919, which the Board may deem necessary to prevent inconvenience to the public pending the

carrying into effect of any of the provisions of this Act.

9. The Lieutenant-Governor in Council may from time to time set apart out of the Consolidated Revenue Fund such sums as may be required for the purposes set forth in this Act and the sums so set apart shall form a special fund to be known as "The License Commissioners' Special Fund," out of which may be paid from time to time such sums as may be necessary for the purposes of this Act; such payments shall be made upon warrants issued by the Board and approved by the Minister, and such approval shall be sufficient authority to the Provincial Treasurer to issue cheques for such payments.

Provision  
for funds.

10. The accounts of the Board relative to the operations authorized under sections 2, 3 and 5 hereof, shall upon the direction of the Lieutenant-Governor in Council be from time to time and at least once in every year audited by the auditor for Ontario, or such other auditor or auditors as may be named in the direction of the Lieutenant-Governor in Council, and the costs and expenses of such audits shall be fixed by the Board with the approval of the Lieutenant-Governor in Council, and shall be payable by the Board as part of the cost of administration of the Board.

Audit.

11. The Board shall have a seal upon which shall be inscribed the words "The Board of License Commissioners for Ontario," and all leases, agreements and other documents required to be executed by the Board shall be sealed with the seal of the Board and signed by the Chairman and Secretary of the Board, and when so executed shall be binding upon the Board.

Seal of  
Board.

12. The chairman and each member of the Board may be paid such annual sums for these services as may from time to time be determined by the Lieutenant-Governor in Council and such sums shall form part of the expenses of the Board.

Payment  
of chair-  
man and  
members  
of Board.

13. This Act shall be read with and as part of *The Ontario Temperance Act* and any of the provisions of that Act inconsistent with the provisions of this Act shall be deemed to be repealed. 1919, c. 60, ss. 1-13.

Act incor-  
porated  
with 6 Geo.  
V, c. 50.

## PARTNERSHIPS.

Granting  
licenses  
to partner-  
ships. Rev.  
Stat. c. 139.

8.—(1) Subject to the conditions and regulations in this section and in any Order-in-Council respecting the granting of such licenses, a license may be granted or transferred to a firm registered under *The Partnership Registration Act*, if otherwise qualified.

Application  
for firm  
license.

(2) The application for such license shall be signed by the firm under its name as registered, and by every person registered as a member of such firm in his own name, and the bond or other security to be furnished as provided by section 15 shall be executed and entered into or furnished by each registered member of the firm severally.

Liability of  
members  
of firm.

(3) Every registered member of the firm shall be severally liable to the fines and penalties imposed by this Act in the same manner and to the same extent as if he were the holder of the license, and any prosecution for contravention of any provision of this Act in or upon premises the license for which is held by a firm may be carried on against the individual members of the firm or any one or more of them jointly or severally; but not more than one of the members of the firms shall be convicted of the same offence, and the conviction of one of them shall be a bar to the conviction of the other or others of them.

Effect of  
changes  
in firm.

(4) If during the term of the license any change takes place in the firm by death, dissolution of partnership, or the retirement of any member, the remaining member or members and the legal representatives of any such deceased member shall within one month thereafter obtain the written consent of the Board to the continuance of the business, and if such consent is not obtained or the license is not transferred as provided by section 26 such license shall be void.

Cancellation  
of firm  
license.

(5) The license granted or transferred to any firm may be revoked or cancelled under the circumstances and in the manner provided by section 32 or by any other section of this Act, and those sections shall apply to firms in the same manner and to the same extent as to individuals, and the

conviction of any member of the firm shall for the purposes of those sections be deemed to have been the conviction of the firm. 1916, c. 50, s. 8.

#### COMPANIES.

9.—(1) Subject to the conditions and regulations in this section respecting the granting of such licenses, a license may be granted or transferred to an incorporated company if otherwise qualified.

Licenses to companies.

(2) The application for such license shall be signed by the president and secretary of the company and the corporate seal of the company shall be affixed thereto, and in lieu of the security required by section 15 such security shall be furnished by the company and shall be determined by the Board.

Application for company's license.

(3) The license granted to any company may be revoked or cancelled under the circumstances and in the manner provided by section 32 or by any other section of this Act, and those sections shall apply to companies in the same manner and to the same extent as to individuals. 1916, c. 50, s. 9 (1-3).

Revocation and cancellation of company's license.

#### DISQUALIFIED PERSONS.

10. If an applicant for a license has at any time or in any place been refused a license on the ground that he is not a fit person to hold a license, no application by such applicant shall be entertained within a period of three years from the last of such refusals, and no application by any person for a license shall be entertained within the said period if a person whose application has been refused for the same premises be living upon the premises of the applicant or be in any way connected with the business proposed to be carried on by such applicant. 1916, c. 50, s. 10.

Rejected applicant to be disqualified for three years.

11. No license shall be granted or transferred to any person declared by this Act to be a disqualified person during the continuance of such disqualification, and any license issued or transferred to a person so disqualified shall be

Licenses granted to disqualified persons.

void; and, if any licensee during the time he holds a license becomes disqualified to be an applicant for a license, the license then held by him shall thereupon become void. 1916, c. 50, s. 11. s. 11.

Inspectors  
disqualified.

12. No license shall be granted under the provisions of this Act to or for the benefit of any person who is an inspector, and no license shall be granted in respect of premises the owner or part owner of which is an inspector, and any license issued in contravention of this section shall be void and every local inspector who knowingly recommends the issue of a license in any such case shall be guilty of an offence against this Act. 1916, c. 50, s. 12.

#### APPLICATION FOR LICENSE.

Conditions  
precedent  
to grant of  
license.

13.—(1) No license shall be granted to any person unless

Filing  
application.

(a) He has filed his application therefor, with the affidavits and bond hereinafter mentioned with the local inspector on or before the first day of March in the year in which the license is to be granted;

Giving  
security.

(b) He has given the security required by this Act;

Certificate  
of inspector.

(c) He is certified in writing signed by the inspector to be a person of good reputation and character;

Absence of  
convictions.

(d) He has not been convicted of any offence against any of the provisions of this Act or any previous Act relating to the granting of licenses for the sale of liquor within three years prior to his application;

Compliance  
with re-  
quirements.

(e) He has complied with the requirements of this Act preliminary to the issue of such license and has received a recommendation by the inspector in favour of the issue of the license;

Suitability  
of premises.

(f) The warehouse or store in respect of which he applies for a license is such as is required by this

Act and suitable for carrying on the business in a reputable manner;

(2) Every application received by the inspector shall be transmitted by him to the Board. 1916, c. 50, s. 13.

Transmission of application to Board.

14. The application for a license shall be in the form given in Schedule "B" to this Act, and shall be accompanied by the affidavits of the applicant and two reputable persons residing in the district verifying the correctness of the statements in such application in the forms 1 and 2 in the said schedule. 1916, c. 50, s. 14; 1917, c. 50, s. 7.

Verification of statements in application.

15. —(1) Before any license is issued, the person applying for the same shall enter into a bond to His Majesty, with two good and sufficient sureties, residents of Ontario, to be approved by the local inspector, with the condition and in other respects according to the form, or to the effect given in Schedule "C" to this Act, as is applicable to the case, and such bond shall accompany the application and be filed therewith.

Bond by applicant.

(2) Members of municipal councils, inspectors and constables shall not be accepted as sureties in the bond to be given under this section.

Disqualification for suretyship.

(3) The penalty mentioned in the bond may on breach of the condition of the bond be recoverable by and shall be payable to His Majesty at the suit of the Attorney-General of Ontario.

Recovery of penalty.

(4) The bond of a guarantee company, approved of by the Lieutenant-Governor in Council under *The Public Officers Act*, may be accepted in lieu of a bond with personal sureties, in which case the necessary changes shall be made in the form of bond given in Schedule "C." 1916, c. 50, s. 15.

Acceptance of bond of guarantee company.

16. The amount of the bond shall be for the applicant or principal \$500, and for the sureties \$250 each, and such principal and sureties shall justify by affidavit in the said

Amount of security.

amounts respectively, but if the bond of a guarantee company is furnished it shall be in the sum of \$500. 1916, c. 50, s. 16.

Publication  
of notice of  
applications.

17. The inspector shall, at least fourteen days before the meeting of the Board at which the applications are to be considered, cause to be published in at least two issues of some newspaper published in the county or district town, if there is one published therein, or in some other city or town in the county or district (if there is no such newspaper published in the county or district town);

- (a) The name of each applicant for a license, who is not at the time of making the application a licensee in the municipality in which the license is sought to be obtained, or who applies for the licensing of premises not then under license;
- (b) The description of license applied for and the place, described with sufficient certainty, where such applicant proposes to sell;
- (c) The total number of licenses issued during the current license year; and
- (d) The total number of applications for the ensuing year; and he shall also keep a list of all applications, to be entered in a book to be kept by him for the purpose, containing similar information, and such list shall be open to the public for inspection without charge. 1916, c. 50, s. 17.

Investiga-  
tion by in-  
spector and  
report on  
applications.

18. It shall be the duty of the inspector as soon as possible after the first day of March in each year to make an investigation in respect of the application and inspect the building and premises in respect of which the application for license is made and to report in writing to the Board and such report shall contain:—

- (a) A description of the buildings or premises in respect of which a license is asked and report on



the suitability thereof for the proposed business;

- (b) If the application is made by a person who, under this or any other law of Ontario heretofore existing, held a license for the same premises during the preceding year for the sale of liquors, a statement showing the manner in which the premises were kept and the business conducted during the existence of the previous license, and the character of the persons frequenting the premises and the number of convictions against the applicant, if any;
- (c) A statement of the fitness of the applicant to receive a license and the character and reputation of such applicant;
- (d) A statement of any objection against the applicant or the said warehouse or store, and of anything which in the opinion of the inspector should constitute an objection to the granting of the application. 1916, c. 50, s. 18.

19. All papers in the office of the inspector connected with applications and objections thereto shall be at all times open to the inspection of the public without charge. 1916, c. 50, s. 19.

Papers in inspector's office may be seen.

20. Any ten or more electors of any polling subdivision may object by petition, or in any similar manner, to the granting of any license within such subdivision on the ground:

Objections to applications.

- (a) That the requirements of this Act preliminary to the hearing of the application or relating to the application or affidavits have not been observed by the applicant, or that the bond filed by the applicant is not a good and sufficient bond for any reason, or that the sureties therein named are not good and sufficient sureties;

- (b) That the applicant is of bad fame or character, or of drunken habits, or has within three years previously forfeited a license issued under this or any other law now or heretofore existing respecting the licensing of the sale of liquor; that the applicant has been convicted within the period of three years next preceding the date of the application of a disqualifying infraction of this or any previously existing *Liquor License Act*; or that he has within the period of three years next preceding the date of the application kept a place in which the illicit sale or dealing in liquors was frequent and notorious; or
- (c) That the premises in question are not such as to comply with the requirements of this Act, or are so constructed or equipped as to facilitate the violation of this Act;
- (d) That the applicant cannot comply with or fulfil the conditions or does not possess the qualifications required by section 13 of this Act.

Board may  
refuse  
license on  
other  
grounds.

Any of the above grounds on being established shall be sufficient to justify the Board in refusing to grant the application, but the above shall not be the only objections to be considered or given effect to by the Board. 1916, c. 50, s. 20.

Appointment  
and notice  
of hearing  
application  
and objec-  
tions to  
license.

21. In case notice of objections to the issue of a license is filed and given as aforesaid the Board or some member of the Board shall fix a convenient time and place at which to hear evidence with regard to the application and the objections thereto, and the inspector shall thereupon give notice thereof in writing by registered post to the applicant and to the persons filing objections. 1916, c. 50, s. 21.

Powers of  
Board on  
hearing.

22.—(1) At the time and place so fixed for the hearing of evidence regarding such application and objections, or at the time and place fixed by adjournment the Board or a member thereof shall proceed to hear such evidence, and for

that purpose shall possess the powers and authority of a judge sitting for the trial of an action, including the subpoenaing, calling and paying of witnesses, maintenance of order and other matters not herein specially provided for shall be followed.

(2) The hearing of such applications shall be open to the public. Hearing to be open to public.

(3) Every applicant shall be personally present at the hearing of his application, unless he is absent for a reason satisfactory to the Board. Applicant to be present.

(4) The Board may from time to time adjourn the hearing of any application. 1916, c. 50, s. 22. Adjournment of hearing.

23. The inspector, the applicant and any person objecting to the application as hereinbefore mentioned, and the representative of any municipality wherein is situated the warehouse or store proposed to be licensed, shall be entitled to be present at such hearing and to be heard personally or by counsel or agent and to produce witnesses and evidence. 1916, c. 50, s. 23. Who may be present at hearing and be heard.

24.—(1) On all applications, and whether objections have been made or filed or not, it shall be the duty of the inspector to see that the requirements of this Act preliminary to the hearing of the application have been complied with. Inspector to see that requirements complied with.

(2) If the inspector certifies in writing to the Board that such requirements have been complied with, but not otherwise, the Board shall proceed to consider every such application and all objections thereto, and all matters concerning the same, and to ascertain whether all the statutory requirements have been complied with, and to take notice of any objection whether the same is filed or not, and whether any person has raised it or not, and to take evidence of witnesses on oath in respect thereof if they deem such evidence necessary or proper, and for the purpose of this section the Board may fix a time and place to hear the parties to the application and any objection thereto in the same way and with the Board to consider and deal with application.

same powers and authority as provided in cases where notice of objection has been formally given as provided by this Act, and the Board after having fully considered the matter may in their discretion grant or refuse the application.

(3) The Board may require the production of evidence as to the ownership of business. 1916, c. 50, s. 24.

#### TRANSFER OF LICENSES, REMOVAL OF LICENSEES.

Removal  
of licensee  
to other  
premises.

25. If any person having lawfully obtained a license under this Act removes or intends to remove from the premises in respect of which the said license applies, he may apply to the Board for their written consent to the transfer of such license to the premises to which the licensee has removed or intends to remove, and the Board may, if they see fit, give their written consent to such transfer or may require the licensee to proceed as in the case of transfer of license to another person as hereinafter provided for. 1916, c. 50, s. 25.

Death of  
licensee.

26. If any person having lawfully obtained a license under this Act dies before the expiration of his license, or sells or otherwise assigns his business or becomes dispossessed of it by operation of law, or if the licensed premises are destroyed by fire or otherwise, the license, subject to sections 27 and 28, shall *ipso facto* become forfeited and be absolutely null and void to all intents and purposes whatsoever. 1916, c. 50, s. 26.

Permit to  
executors,  
etc., to  
carry on  
business.

27. The Board may, if it deems proper, give in writing permission for the carrying on of business under any such license in the premises described in such written permission by any person who may appear to be entitled to the benefit thereof, but such permission shall not extend beyond the period of one month from the happening of the event from which the forfeiture of the license would result, and such permission shall entitle the person to whom it is granted to the benefit of the license during that month according to the terms of the permission. 1916, c. 50, s. 27.

28. Any person claiming the benefit of such license may, within such period of one month, apply to the Board for the transfer thereof to him or to other premises as the case may be, and the like proceedings shall be had and taken for the hearing and consideration of such application by the Board as are provided in section 30 hereof in the case of application for a license at other than the regular time. 1916, c. 50, s. 28.

Transfer  
of license.

29. Any bond or security which the holder of a license may have given for any purpose in relation to such license shall, in case of removal, apply to the warehouse or store to which such removal is authorized; and, in all cases where a party other than the original licensee applies under any circumstances for the transfer of a license to him, he shall furnish such security as may be required in the case of an original application for a license. 1916, c. 50, s. 29.

Security to  
apply to new  
premises.

30. If any person, who has not been refused a license within the year next preceding, wishes to apply for a license at any other time than as hereinbefore provided, he may send to the Inspector his application, and thereupon the Inspector, under the direction of the Board, shall advertise such application in the manner provided for by section 17 and all the provisions of this Act as to objections to license and the conduct of any proceedings at and subsequent to the regular hearing of applications shall apply to every application made under this section. 1916, c. 50, s. 30.

Application  
for license  
after date  
of general  
issue.

31. The Board may at any time, upon application by a licensee, cancel the license held by such licensee. 1916, c. 50, s. 31.

Cancellation  
of applica-  
tion of  
licensee.

32.—(1) Where a complaint in writing signed by ten or more ratepayers resident near the warehouse or store referred to in the complaint, or occupied by the person complained against, is lodged with the Inspector, together with the sum of \$20, to be paid to the Treasurer of Ontario, to form part of the Consolidated Revenue Fund, to the effect that the license for any premises or any transfer thereof to another person or to other premises has been obtained by

Cancellation  
by county  
judge where  
license  
obtained by  
fraud, etc.

fraud or false statements, or in an improper manner, or that the conditions necessary to the granting of such license do not exist at the time of the complaint, or that the licensed premises are constructed in such a way as not to be in accordance with the requirements of this Act, or that the licensee is not keeping the licensed premises in an orderly manner or in accordance with such requirements, or that he has been guilty of any infraction of this Act for which his license is declared subject to forfeiture, the inspector shall forthwith give notice of such complaint to the licensee and transmit the complaint to the Judge of the county or district court of the county or district in which such licensed premises are situate, and the Judge shall thereupon fix a time and place when he will hear the complaint, and notice in writing of such time and place shall be mailed by the judge or, at the request of the judge, by the clerk of the county or district court, at least ten days before the hearing, to the person complaining and the persons complained against, and the judge shall proceed to hear and summarily determine the matter of the complaint, and the proceedings in and about the same, including the compelling the attendance and hearing of witnesses, shall, as nearly as possible, be the same as in the case of the hearing of an action in the county or district court, and the judge shall, if he finds the complaint established, adjudge that such license ought to be revoked and thereupon shall order that the same be revoked and cancelled accordingly; and thereupon the license shall be and become inoperative and of no effect and the person to whom such license is issued, shall thereafter during the full period of two years be disqualified from obtaining any further or other license under this Act.

Return of  
deposit of  
complainant.

(2) In the event of the cancellation of a license under subsection 1, the sum of \$20, so deposited with the Treasurer of Ontario, shall be returned to the complainant upon the production of the order of the judge. 1916, c. 50, s. 22.

#### VENDOR'S LICENSE.

Vendor's  
license.

**33.** A vendor's license shall be in the form given in Schedule "A" to this Act. 1916, c. 50, s. 33.

34. A vendor's license shall not authorize the sale of liquor in quantities greater than those mentioned in this Act, or otherwise or in any other place, or to other persons or for other purposes than as provided in this Act. 1916, c. 50, s. 34. (Vide sec. 144 *re fee*.)

Limitation  
as to  
quantities.

35.—(1) No vendor shall sell any alcohol or other liquor for mechanical or scientific purposes except upon the affidavit of the applicant which shall be in the form in Schedule "D" to this Act, and which shall set forth that such alcohol or other liquor is required for mechanical or scientific purposes alone, and not to be used as a beverage or to be mixed with any other liquor for use as a beverage, nor to sell, nor to give away, and that it is intended only for the applicant's own use for mechanical or scientific purposes, and that the applicant is over twenty-one years of age, and shall also set forth the quantity desired. In case such applicant resides in Toronto, such affidavit shall be made before a member of the Board. 1916, c. 50, s. 35 (1); 1917, c. 50, s. 8; 1920, c. 78, s. 2.

Sale of  
alcohol for  
mechanical  
or scientific  
purposes.

(2) No more than one sale and one delivery shall be made on one affidavit and the licensee shall file and retain such affidavit in his office and allow the same to be inspected by any person at any time within one year from the date thereof. 1916, c. 50, s. 35 (2).

No more  
than one  
sale and one  
delivery to  
be made.

36. Every licensee holding a vendor's license and every druggist and wholesale druggist shall keep or cause to be kept an accurate record of each sale and disposal of any liquor made by him, his clerks, servants or agents, in a book to be kept for that purpose, and such record shall be made before the delivery of such liquor and shall show the time when, the name and address of the person to whom the same was made, and the kind and quantity sold. 1916, c. 50, s. 36.

Record of  
sales by  
licensee.

37. No sale or other disposal of liquors shall take place on, out of, or from any licensed premises of a licensee holding a vendor's license, to any person or persons whomsoever, nor shall such licensed premises be open, from or after the

Hours of  
sale.

hour of seven o'clock on Saturday night until seven o'clock on Monday morning thereafter, or from eight o'clock at night until seven o'clock in the morning on the other days of the week. 1916, c. 50, s. 37.

Quarterly  
return of  
records of  
sales.

38. Every licensee under this Act and every druggist and wholesale druggist shall on the first days of the months of January, April, July and October, or within ten days of each of said dates, in each year send to the Board a copy of the record mentioned in section 36 of this Act for the months not previously returned, verified by his affidavit attached thereto, and such affidavit shall state that no other sales were made during such months save those mentioned in the copy of the record sent to the Board, and in the event of no liquor having been sold during the period for which the return is required to be made, the affidavit shall so state according to the facts. 1916, c. 50, s. 38; 1917, c. 50, s. 9; 1920, c. 78, s. 3. (Vide also s. 119 (4).)

Communica-  
tion with  
other  
premises.

39. Every distiller, brewer or other person licensed by the Government of Canada to manufacture any liquor mentioned in section 45 hereof, and every liquor exporter mentioned in section 46 hereof, and every vendor, who makes or uses or allows to be made or used any internal communication between the premises in which he is entitled to carry on the business of manufacture or sale of any liquor and any other premises, except by means of electric telephone or telegraph shall be guilty of an offence and liable to a penalty of \$50 for every day during which such communication exists, and in default of payment to one month's imprisonment for each day as aforesaid. 1916, c. 50, s. 39.

#### PROHIBITIONS AND REGULATIONS.

Keeping  
for sale.

40. No person shall by himself, his clerk, servant or agent, expose or keep for sale or directly or indirectly or upon any pretence or upon any device sell or barter or, in consideration of the purchase or transfer of any property or thing, or at the time of the transfer of any property or thing, give to any other person any liquor without having first obtained a license under this Act authorizing him so to do,



and then only as authorized by such license and as prescribed by this Act. 1916, c. 50, s. 40.

On a charge of keeping liquor for sale, after it has been proved that the accused had liquor in his possession, evidence may be given that he sold liquor; this may be proved by the production of a previous conviction for selling. *R. v. McKenzie* (No. 2) (1921), 64 D.L.R. 223, 37 Can. Cr. Cas. 87, 50 O.L.R. 160.

An unlawful sale however may be made without keeping for sale; a sale may be made of that which is kept for a lawful purpose. *R. v. McKay* (1919), 46 O.L.R. 125, 32 Can. Cr. Cas. 9.

But when a man has been convicted for selling liquor he may be charged with having liquor for sale on a date prior to the conviction for selling. *R. v. McKenzie* (Nos 1 & 2) (1921), 64 D.L.R. 222 & 223, 37 Can. Cr. Cas. 86 & 87, 50 O.L.R. 159 & 160.

On a charge of keeping liquor for sale the character of the house, the frequent presence of other men, their entering or leaving the house intoxicated, the number of empty bottles, and the drinking of liquor in the house by strange men are all factors in assisting the Magistrate to come to a conclusion. *R. v. Collina* (1920), 55 D.L.R. 29, 34 Can. Cr. Cas. 109, 48 O.L.R. 199.

On a charge of selling liquor, an earlier date of a sale than the date of delivery may be inferred from the facts.

Sale of Goods Act 1920 (Ont.) ch. 40, sec. 20, R. 5. *R. v. Robins* (1920), 48 O.L.R. 527, 35 Can. Cr. Cas. 1.

Section 40 has been referred to and dealt with in the following cases which are noted for reference. *R. v. Bracci* (1918), 29 Can. Cr. Cas. 351; *R. v. Bondy* (1921), 49 O.L.R. 115; *R. v. Bierenholtz* (1921), 26 Can. Cr. Cas. 199; *R. v. Donihee* (1921), 36 Can. Cr. Cas. 293; *R. v. Drury* (1921), 36 Can. Cr. Cas. 187; *R. v. De Angelis* (1920), 48

O.L.R. 160, 34 Can. Cr. Cas. 12; R. v. Fields (1921), 58 D.L.R. 507, 36 Can. Cr. Cas. 214; R. v. Grassi (1917), 40 O.L.R. 359; R. v. Harris (1917), 40 D.L.R. 684, 30 Can. Cr. Cas. 13, 41 O.L.R. 366; R. v. Hogan (1920), 47 O.L.R. 243; R. v. Hagen (1920), 53 D.L.R. 479, 33 Can. Cr. Cas. 208, 47 O.L.R. 384; R. v. Johnston (1921), 58 D.L.R. 452, 36 Can. Cr. Cas. 295, 49 O.L.R. 74; R. v. Korluck (1920), 19 O.W.N. 34; R. v. Le Clair (1917), 28 Can. Cr. Cas. 216, 39 O.L.R. 436; R. v. Lake (1916), 28 Can. Cr. Cas. 138, 38 O.L.R. 262; R. v. Lemaire (1920), 57 D.L.R. 621, 34 Can. Cr. Cas. 254, 48 O.L.R. 475; R. v. McFarline (1917), 27 Can. Cr. Cas. 445; R. v. Mooney (1921), 58 D.L.R. 524, 36 Can. Cr. Cas. 165, 49 O.L.R. 550; R. v. McCranor (1918), 47 D.L.R. 237, 31 Can. Cr. Cas. 130, 44 O.L.R. 482; R. v. Nazzareno (1918), 30 Can. Cr. Cas. 290, 44 O.L.R. 36; R. v. Powell (1920), 57 D.L.R. 741, 34 Can. Cr. Cas. 240, 48 O.L.R. 492; R. v. Punnett (1920), 18 O.W.N. 229; R. v. Riddell (1916), 28 Can. Cr. Cas. 317, 38 O.L.R. 222; R. v. Sakalov (1921), 36 Can. Cr. Cas. 346, 20 O.W.N. 302; R. v. Soo Tong (1919), 16 O.W.N. 146; R. v. Warne Drug Co. (1917), 37 D.L.R. 788, 29 Can. Cr. Cas. 384, 40 O.L.R. 469.

False labels.

**40a.**—(1) Every person who uses or permits to be used any sign or label upon any bottle, cask or other vessel in which liquor is kept which does not correctly and truly state the nature of the contents of such bottle, cask or other vessel, or which is in any manner calculated to mislead any person as to the nature, description, or quality of such contents, and every person other than the lawful manufacturer of the liquor or person acting under his authorization, who attaches or causes to be attached to any bottle, flask, cask or other vessel, or package of liquor, any label, stamp or other device containing any statement or information as to the name of the manufacturer of the liquor, shall be guilty of an offence against this Act and shall upon conviction be subject to the penalties provided in subsection 1 of section 58 hereof. (1922.)

Penalty.

Liquor not to be kept in unauthor- ized places.

**41.**—(1) Except as provided by this Act, no person by himself, his clerk, servant or agent shall have or keep or give liquor in any place wheresoever, other than in the pri-

vate dwelling house in which he resides, without having first obtained a license under this Act authorizing him so to do, and then only as authorized by such license. 1916, c. 50, s. 41 (1).

- (a) Any person who drinks liquor in a place where such liquor cannot lawfully be kept shall be deemed to have liquor in contravention of this section. 1917, c. 50, s. 10.

R. v. Kallas (1919), 31 Can. Cr. Cas. 57.

(2) No licensee, and no partner, clerk, agent or servant of such licensee, shall allow any liquor to be consumed or drunk upon or within the licensed premises. 1916, c. 50, s. 41 (2).

Consumption of liquor on licensed premises.

R. v. Schooley (1917), 27 Can. Cr. Cas. 444.

(3) This section shall not prevent any person engaged in mechanical business or in scientific pursuits from having in his possession alcohol or other liquor for mechanical or scientific purposes, as the case may be, in a quantity not exceeding four gallons at any one time, in addition to alcohol used in the preservation of specimens for scientific purposes, or prevent any minister of the gospel from having in his possession wine for sacramental purposes; but no person in this subsection mentioned shall use or consume or allow to be used or consumed any of the liquor which may so be kept by him as a beverage. (Vide sec. 35 and sched. D.)

Alcohol for mechanical or scientific purposes.

- (a) In case a university or other public institution of learning requires a larger quantity than four gallons of alcohol for the purposes aforesaid an application may be made to the Board for a permit to purchase the same, which the Board may grant subject in other respects to the same restrictions as apply to other cases.

Purchase of alcohol for University, etc.

- (b) Nothing in this section contained shall apply to the room of a sick person for whom liquor has been prescribed by a duly qualified medical

Liquor in room of sick person.

practitioner in a quantity permitted by this Act, nor shall anything herein contained apply to an analyst who is in possession of alcohol in his professional capacity. 1916, c. 50, s. 41 (3); 1917, c. 50, s. 11.

Hospitals.

(4) Nothing in this section shall prevent the keeping in any public hospital or in any private hospital or any institution devoted exclusively to the care of old people, or any house of refuge or industry, sanatorium for consumptives, or private sanitarium, liquor for the use of patients or for the use of the inmates of such institution or house of refuge or industry as the case may be, but no such liquor shall be consumed by any person other than a patient, and then only when prescribed or administered by a physician as provided by section 51 of this Act. 1916, c. 50, s. 41; 1917, c. 50, s. 12.

Keeping liquor for first aid purposes in factory, etc.

(a) Nothing in this section contained shall prevent liquor not exceeding one quart being kept on the premises of any manufacturing or industrial establishment to be used in such quantity only as may be necessary in case of accident or other emergency occurring on the said premises where the administration of a stimulant to the person injured appears to be urgent, but no liquor shall be so kept until a permit has been obtained from the Board authorizing it and upon the production of such permit to any druggist he may supply such liquor. 1917, c. 50, s. 13; 1920, c. 78, s. 4.

“Private dwelling house” within the meaning of the Act is defined by sec. 2, sub-sec. (i). Vide cases noted ante.

Where a sale is made by one party to another, the latter cannot be convicted under sec. 41 unless it is shown either that possession has been given or the property passed. See Sale of Goods Act 1920 (Ont.), ch. 40, secs. 18, 19, 20; R. v. Chappus (1920), 55 D.L.R. 77, 24 Can. Cr. Cas. 94, 48 O.L.R. 189.

Upon it being established that a house is used as a common bawdy-house, it is deprived of its exclusive character as a private dwelling house. *R. v. Tereschuk*, 17 O.W.N. 281.

The words "in which he resides" do not demand actual physical occupancy of the place, if the bona fide residential character is otherwise established. Possession may be sufficient and it is not necessary that the accused may have commenced to sleep and have his meals there. The essential feature is bona fides and absence of any effort to evade the law. *R. v. Mark Park*, 61 D.L.R. 469, 34 Can. Cr. Cas. 203, 48 O.L.R. 623.

Section 41 is not intended to afford a basis for interfering with the export of intoxicating liquors from the Province. *Graham & Strang v. Dominion Express* (1920), 55 D.L.R. 39, 35 Can. Cr. Cas. 145, 48 O.L.R. 83.

On a charge of having liquor in an illegal place under sec. 41, evidence that men had been seen coming from the defendant's premises in an intoxicated condition is irrelevant and inadmissible. *R. v. Melvin* (1916), 34 D.L.R. 382, 27 Can. Cr. Cas. 350, 38 O.L.R. 231.

It is illegal to have liquor in an apartment under a place of business even though there be no internal communication. Sec. 2, sub-sec. (i) (i), *R. v. Purdy* (1917), 41 O.L.R. 49.

The following decisions refer to or are based on sec. 41 and are noted for reference:—*R. v. Kaplan* 52 D.L.R. 596, 36 Can. Cr. Cas. 24, 47 O.L.R. 110; *R. v. Moore* (1917), 30 Can. Cr. Cas. 206, 41 O.L.R. 372; *R. v. Gulex* (1917), 28 Can. Cr. Cas. 261, 39 O.L.R. 539; *R. v. Tugman* (1917), 40 O.L.R. 349; *R. v. Martin* (1917), 40 O.L.R. 270 affirmed (1917), 39 D.L.R. 635, 41 O.L.R. 79; *R. v. O'Donnell* (1919), 16 O.W.N. 330; *R. v. Harris* (1917), 40 D.L.R. 684, 30 Can. Cr. Cas. 13, 41 O.L.R. 366; *R. v. Hanley* (1917), 30 Can. Cr. Cas. 63, 41 O.L.R. 177; *R. v. Leduc* (1918), 30 Can. Cr. Cas. 246, 43 O.L.R. 290; *R. v. Cramner* (1920), 54 D.L.R. 606, 48 O.L.R. 21; *R. v. Kozak*

(1920), 53 D.L.R. 369, 33 Can. Cr. Cas. 189, 47 O.L.R. 378, affirmed 16 O.W.N. 253; *R. v. Hagen* 53 D.L.R. 479, 33 Can. Cr. Cas. 208; 47 O.L.R. 384; *R. v. Williams* (1916), 27 Can. Cr. Cas. 264; *R. v. Rosarri* (1918), 29 Can. Cr. Cas. 297; *R. v. Mercier* (1919), 31 Can. Cr. Cas. 171, 45 O.L.R. 237, affirmed 16 O.W.N. 253; *R. v. Maker* 54 D.L.R. 684, 35 Can. Cr. Cas. 130, 48 O.L.R. 182; *R. v. Nealon* (1920), 19 O.W.N. 83; *R. v. Perron* (1920), 36 Can. Cr. Cas. 193, 19 O.W.N. 351; *R. v. Helpert* (1920), 35 Can. Cr. Cas. 25, 48 O.L.R. 627; *R. v. Martel* (1920), 35 Can. Cr. Cas. 105, 48 O.L.R. 347; *R. v. Slew* (1921), 19 O.W.N. 497; *R. v. Condola* (1918), 30 Can. Cr. Cas. 298, 43 O.L.R. 591; *R. v. Baird* (1919), 45 O.L.R. 242; *R. v. Smith* (1920), 18 O.W.N. 220; *R. v. Carswell* (1918), 43 D.L.R. 715, 30 Can. Cr. Cas. 282, 42 O.L.R. 34; *R. v. Foxton*, 34 Can. Cr. Cas. 9, 48 O.L.R. 207; *R. v. Johnson* (1920), 55 D.L.R. 65, 34 Can. Cr. Cas. 98, 48 O.L.R. 203; *R. v. Moore* (1917), 30 Can. Cr. Cas. 206, 41 O.L.R. 372; *R. v. Faulkner* (1920), 57 D.L.R. 549, 34 Can. Cr. Cas. 224, 48 O.L.R. 500; *R. v. Hayton* (1920), 57 D.L.R. 532, 35 Can. Cr. Cas. 193, 48 O.L.R. 494; *R. v. Cordelli* (1921), 20 O.W.N. 172; *R. v. Newton* (1920), 36 Can. Cr. Cas. 80, 48 O.L.R. 403; *R. v. Fields* 58 D.L.R. 507, 36 Can. Cr. Cas. 214, 49 O.L.R. 266.

Canvassing.

**42.** Every person, whether licensed or unlicensed, who, by himself, his servant, or agent canvasses for, or receives, or solicits orders for liquor for beverage purposes within this Province, shall be guilty of an offence against this Act and shall incur the penalties provided in section 59 of this Act. 1916, c. 50, s. 42.

Regulations as to soliciting orders.

**\*\*42a.**—(1) The Board may pass regulations prohibiting, restricting, and regulating within the powers of this Province the solicitation within Ontario of orders for liquor, but this section shall not be construed to interfere with the provisions of section 139 of this Act.

Publication of regulations.

(2) Any regulation passed by the Board under this section shall be published in the next issue of *The Ontario Gazette*. 1917, c. 50, s. 53.

**\*\*NOTE.**—*Numbered 42a for convenience of arrangement only. The section should be cited as section 53 of The Ontario Temperance Amendment Act, 1917.*

(NOTE.—*The following section dealing with price lists was enacted by The Ontario Temperance Amendment Act, 1919.*)

22.—No person whether licensed or unlicensed acting either by himself, his clerk, servant or agent and no person as such clerk, servant or agent shall within Ontario, print, publish, or distribute either publicly or privately any circular or any newspaper containing a price list of intoxicating liquor used for beverage purposes however described, or any announcement howsoever expressed having for its object the solicitation within Ontario of orders for such liquor, and no person within Ontario shall by any other means whatever solicit such orders. Every person who violates this section or any part thereof or allows such violation to be committed or continued shall be deemed to be guilty of an offence against *The Ontario Temperance Act* and shall incur the penalties provided by section 58 of the said Act. But nothing herein contained shall affect a manufacturer within the Province of Ontario, provided he does not print, publish or distribute as aforesaid any circular or newspaper which in the discretion of the Board is objectionable. 1919, c. 60, s. 22.

Prohibition  
in circulation  
of price lists  
of liquor.

43. Nothing in section 40 hereof contained shall apply to sales under execution or other judicial process or for distress, or to sales by assignees or trustees in bankruptcy or insolvency, provided that the stock of liquor is not broken for the purpose of such sale. 1916, c. 50, s. 43; 1917, c. 50, s. 16; 1920, c. 80, s. 8.

Sales under  
judicial  
process.

Prior to July 19th, 1921, under the provisions of sec. 43, it was legal to carry liquor from one place, where liquor might lawfully be kept within Ontario, to another such place. But under sec. 8 of the Liquor Transportation Act, 1920 (Ont.), ch. 80, which was made operative by Order in Council dated July 5, 1921, on July 19, 1921, sec. 43 was

amended by striking out all the words after the word "sale" in the fifth line.

Liquor may now be carried or transported from one place to another within Ontario only in the following cases: 1. The sale, carriage, transportation, or delivery of liquor by or under order of the Board of License Commissioners. 1920 (Ont.), ch. 80, sec 6 (c).

2. The carriage, transportation, receiving, or taking delivery of liquor sold under execution or other judicial process, or for distress, or sold by assignees, or trustees in bankruptcy or insolvency, provided that the stock of liquor is not broken for the purpose of such sale—Section 43 as amended, 1920 (Ont.), ch. 80, sec. 8 and 1921 (Ont.), ch. 73, sec. 9.

3. The owner in his private capacity may transport liquor from any place where the same may be lawfully kept to any other premises or place where the same may be lawfully kept and which such owner controls within the Province of Ontario, provided the ownership of such liquor remains unchanged. 1918 (Ont.), ch. 40, sec. 30; 1920 (Ont.), ch. 80, sec. 6—amended by 1921 (Ont.), ch. 73, sec. 9.

4. The carriage or delivery of native wines under sec. 44.

The following cases affecting sec. 43 were decided prior to the amendment above referred to and are cited for reference only:—*R. v. McGonegal* (1920), 57 D.L.R. 475, 35 Can. Cr. Cas. 202, 48 O.L.R. 499; *R. v. Newton*, 36 Can. Cr. Cas. 80, 48 O.L.R. 403; *R. v. Kozak* (1920), 53 D.L.R. 369, 32 Can. Cr. Cas. 189, 47 O.L.R. 378; *R. v. Cramer* (1920), 54 D.L.R. 606, 48 O.L.R. 21.

Sale of  
native wines.

44.—(1) Subject to any regulations or restrictions which the Board may impose, manufacturers of native wines, from grapes grown and produced in Ontario, may sell the same in wholesale quantities only, that is to say in quantities of not less than five gallons in each cask or vessel at any one time and when sold in bottles not less than one dozen bottles of at



least three half pints each at any one time.

(2) A manufacturer of native wines who sells such wine otherwise than as permitted by this section or who allows any wine so sold or any part thereof to be drunk upon the premises of such manufacturer shall be guilty of an offence against this Act. 1916, c. 50, s. 44. Restrictions.

Anyone who buys and has in possession native wine is subject to the same onus under sec. 88 as the possessor of any other liquor. *R. v. Nazzareno* (1918), 30 Can. Cr. Cas. 290, 44 O.L.R. 36.

45. Nothing herein contained shall prevent any brewer, distiller or other person duly licensed by the Government of Canada, for the manufacture of spirituous, fermented or other liquors, from keeping or having liquor manufactured by him in any building wherein such manufacture is carried on, provided such building does not contravene the provisions of section 39 hereof, or from selling liquor therefrom to a person in another Province or in a foreign country or to a licensee under this Act, or to the keeper of an export liquor warehouse within the meaning of section 46, nor shall it prevent a distiller selling alcohol to a wholesale druggist. 1916, c. 50, s. 45; 1917, c. 50, s. 15; 1919, c. 60, s. 14. Licensed brewers and distillers.

(a) Nothing in this Act shall prevent a distiller from supplying to any Government Department alcohol for medicinal, scientific or other necessary purpose but all alcohol so supplied shall be duly entered in a book to be kept for that purpose, shewing dates and quantities supplied. 1917, c. 50, s. 15 (a). Sales by licensed brewers and distillers.

46. Nothing herein contained shall prevent any person from having liquor for export sale in a bonded liquor warehouse, or from selling such liquors from such bonded liquor warehouse to persons in other Provinces or in foreign countries. Supplying alcohol to Government Department.

(a) The term "bonded liquor warehouse" as used in Export sale warehouses.

this section, shall mean a place where liquor is lawfully lodged, kept and secured under the authority of the Statutes of the Parliament of Canada. 1921, c. 73, s. 3.

The right to export liquor from the Province is fully supported in *Graham and Strank v. Dominion Express Co.* 55 D.L.R. 39, 35 Can. Cr. Cas. 145, 48 O.L.R. 83.

Use and consumption of liquor procured in Ontario prohibited.

47. Except as provided by this Act no person shall use or consume liquor in Ontario purchased and received from any person in Ontario, unless it be purchased and received from a licensee, but this section shall not apply to any person who within a private dwelling house innocently uses or consumes liquor not thus purchased and received. 1916, c. 46, s. 47.

Record to be kept by brewers, etc., as evidence.

48. For the purpose of evidence, every brewer, distiller or other person licensed by the Government of Canada and mentioned in section 45 hereof, and every liquor exporter mentioned in section 46 hereof, who makes a sale of liquor in Ontario, shall immediately enter in a book to be kept for that purpose the date of such sale, the kind and quantity sold, the person to whom such sale was made and the person or carrier to whom the same was delivered for carriage; and the failure of such person to make, keep and produce as evidence the said entry and record of such sale shall, in any prosecution under this Act of such person for illegally making such sale of liquor, be *prima facie* evidence against such persons of having illegally sold such liquor. 1917, c. 50, s. 48.

Record of sales by brewers and distillers.

(a) A true copy of every such entry and record verified by affidavit shall be delivered or sent by mail to the Board between the first and tenth days of every month shewing all such entries for the preceding month, and failure to comply with this provision shall be an offence against this Act. 1917, c. 50, s. 16.

48a. In every case in which for the purpose of evidence a sale of liquor made in Ontario is required by section 48 to be entered in a book to be kept for that purpose, the liquor so sold and entered is not immediately delivered to the purchaser thereof, a further entry shall be made in the book so kept, showing that the said liquor is held for future delivery, or as the case may be, and whenever the said liquor or any part thereof is delivered, an entry shall immediately be made in the aforesaid book, showing the date of such delivery, the kind and quantity delivered, the name and address of the person to whom such delivery was made and where the same is delivered to a carrier, the name and address of such carrier shall be entered and the provisions of paragraph (a) of said section 48 shall apply to the entry and record required to be kept by this section, and non-compliance therewith shall be an offence against *The Ontario Temperance Act*. 1918, c. 40, s. 10.

49.—(1) No person shall by himself or his partner, servant, clerk, agent or otherwise, sell or deliver liquors of any kind to any person not entitled to sell liquor and who sells such liquor or who buys for the purpose of reselling, and any violation of the foregoing provision shall be an offence under this Act.

Sale for  
unlawful  
re-sale.

(2) No person shall be convicted under this section who establishes to the satisfaction of the magistrate before whom the prosecution is heard that he had reason to believe and did believe that the person to whom the liquor was sold or delivered, did not sell liquor unlawfully, or did not buy to resell, and that he was entitled to purchase the same.

(3) No person shall take or carry, or employ or suffer any other person to take or carry, any liquor out of any premises where the same is lawfully kept for sale for the purpose of being sold in Ontario by any person except a licensee, or as otherwise provided by this Act. 1916, c. 50, s. 49.

Under sec. 49 it is not necessary to shew that the accused knew that the person who received the liquor intended it for

an unlawful purpose but on the other hand the onus is on the accused under sub-sec. (2) to shew that he had reason to believe and did believe the person to whom the liquor was sold or delivered did not sell liquor unlawfully, or did not buy or re-sell and that he was entitled to purchase the same.

On a prosecution under sec. 49 the Magistrate may infer from all the circumstances that the person to whom the liquor is delivered received it for an unlawful purpose within the meaning of the section. *R. v. McEwan* (1917), 30 Can. Cr. Cas. 212, 41 O.L.R. 324. See also *R. v. McFarline*, 27 Can. Cr. Cas. 445.

Consumption on licensed or authorized premises forbidden.

50.—(1) No person shall consume any liquor in or upon any licensed premises or in any liquor warehouse mentioned in section 46 hereof, nor in any distillery or brewery mentioned in section 45 hereof, and no person shall purchase any liquor from any person who is not authorized to sell the same for consumption within the Province, and no person who purchases liquor shall drink or cause any one to drink or allow such liquor to be drunk upon the premises where the same is purchased.

Distiller's samples.

(2) Nothing in this Act shall make it unlawful for a distiller to keep or serve in or upon his office premises free samples of such distiller's product to any person to whom such distiller is entitled to sell under this Act.

(a) "Distiller" as used in this subsection shall mean a person, firm or company engaged in distilling liquor. 1916, c. 50, s. 50 (1), (2). •

Offences committed in order to secure conviction.

(3) If it is made to appear to the magistrate before whom any complaint under this Act is heard, that the person charged with the violation of this section was acting as an officer whose duty it was to enforce this Act, or was acting under the instructions or authority of the Board, or any Inspector or Provincial officer, for the purpose of detecting a known or suspected offender against this Act, and of obtaining evidence upon which he might be brought to justice, the defendant shall not be convicted. 1916, c. 50, s. 50

(3); 1917, c. 50, s. 17.

(4) If, upon any prosecution under this Act, or under any regulation or by-law made or passed under this Act, it appears from the evidence of any witness that such witness was unlawfully present at the time or place at which the offence was committed, or did unlawfully procure, or attempt to procure, liquor at such time or place the magistrate before whom the prosecution is brought may, having regard to the demeanour of the witness and his mode of giving evidence, by certificate in that behalf exempt such witness from prosecution for such unlawful act; but no such exemption shall be granted to any person charged with the unlawful keeping for sale or other disposal of liquor nor to the keeper or occupant of premises upon which the offence in respect of which the prosecution is brought is alleged to have been committed. 1916, c. 50, s. 50 (4).

Exemption  
of witness.

51.—(1) Any physician who is lawfully and regularly engaged in the practice of his profession, and who shall deem any intoxicating liquors necessary for the health of his patients, may give such patient or patients a written or printed prescription therefor in the form in Schedule "E1" to this Act or to the like effect, addressed to a druggist and not exceeding six ounces, except in the case of alcohol for bathing a patient or other necessary purpose, or liquor mixed with any other drug is required when a quantity not exceeding one pint may be prescribed, but no such prescription shall be given except in cases of actual need, and when in the judgment of such physician the use of liquor is necessary, or such physician may administer the liquor himself, and for that purpose may have one quart in his possession when visiting his patients. And every physician who shall give such prescription or administer such liquor in evasion or violation of this Act or who shall give to or write for any person a prescription for or including intoxicating liquor for the purpose of enabling or assisting any person to evade any of the provisions of this Act, or for the purpose of enabling or assisting any person to obtain liquor for use as a beverage, or to be sold or disposed of in any manner in violation of the provisions of this Act, shall be guilty of an offence under this

Rights of  
medical  
practi-  
tioners.

Act. 1916, c. 50, s. 51 (1) part; 1917, c. 50, s. 18.

(a) Upon the prescription of a duly qualified medical practitioner a vendor under this Act may sell and supply for strictly medicinal purposes;

(1) Ale, beer, and porter in quantities not exceeding one dozen bottles, containing not more than three half pints each or a quantity equivalent thereto at any one time;

(2) Wines and distilled liquor not exceeding one quart at any one time. 1916, c. 50, s. 51 (1), cl. a; 1920, c. 78. s. 5 part.

Sale of  
liquor in  
medical  
prescrip-  
tion.

(b) Every prescription issued under the authority of clause (a) of this section shall contain a certificate that the quantity of liquor therein mentioned is the minimum quantity necessary for the patient for whom it is ordered.

Offence.

(c) Any violation of this section shall be an offence against this Act. 1918, c. 40, s. 11; 1919, c. 60, s. 16.

All the provisions of this Act applicable to prescriptions addressed to and the sale of liquor by druggists, save as to quantity, shall apply to the prescription addressed to and the sale of liquor by a vendor under this Act. 1916, c. 50, s. 51 (1) part.

Before a physician may lawfully prescribe liquor for a patient, two things are necessary:—(1) The physician must in his judgment deem intoxicating liquor necessary to the health of the patient; (2) There must be actual need.

It is open for the Magistrate to review the opinion of the physician as to “actual need” and find on the evidence that there is not “actual need,” but this ought to be done only when the Magistrate finds that the physician did not act in good faith. *R. v. Rankin* (1918), 31 Can. Cr. Cas. 275, 45 O.L.R. 96.

The good faith of the physician in granting prescriptions under this section is vital and in a prosecution evidence of other prescriptions given by the accused is admissible. *R. v. Welford* (1918), 30 Can. Cr. Cas. 156, 42 O.L.R. 359. (*Makin v. Att'y Gen'l for New South Wales*, [1894] A.C. 57 followed).

The words "In evasion of violation" mean any of the following:—(1) Where the physician does not deem liquor necessary for the health of his patient; (2) To enable any person to evade the Act; (3) To obtain liquor as a beverage; (4) To obtain liquor to be sold in violation of the Act. *R. v. MacLaren* (1917), 39 O.L.R. 416. See also *Re Cherniak and College of Physicians and Surgeons of Ontario* (1919), 51 D.L.R. 522, 33 Can. Cr. Cas. 43, 46 O.L.R. 434.

(2) Any dentist who is a duly registered member of the Royal College of Dental Surgeons of Ontario and who is lawfully and regularly engaged in the practice of his profession, and who shall deem it necessary that any patient being then under treatment by him should be supplied with liquor as a stimulant or restorative, may himself administer to such patient the liquor thus needed, and for such purpose he may keep in his office a quantity of liquor not exceeding one quart at any one time, but such liquor shall not be administered except in the case of actual need and shall not be drunk or consumed by any other person than such patient, and every such dentist who shall administer such liquor in evasion or violation of this Act shall be guilty of an offence against this Act. 1916, c. 50, s. 51 (2); 1920, c. 78, s. 5 *Part*.

Dentists.

(3) Any duly qualified veterinary surgeon may have liquor in his possession for use in his practice not exceeding in quantity one quart, but no person shall drink or consume any of such liquor. 1916, c. 50, s. 51 (3).

Veterinary surgeons.

51a. Every duly qualified medical practitioner actually engaged in the practice of his profession may notwithstanding anything in *The Ontario Temperance Act*, have in his possession for purely medicinal purposes such quantity of

Quantity of liquor which may be kept by medical practitioner.

liquor not exceeding ten gallons at any one time, as may be prescribed by Order in Council, and such liquor may be kept in the private dwelling house of said practitioner or in his office or dispensary. 1919, c. 60, s. 17.

(NOTE.—By Order in Council dated July 9, 1920, and taking effect August 1, 1920, the quantity of liquor mentioned in section 51a was limited to three gallons.)

Medical prescriptions—how to be dealt with by vendor.

**51b.**—(1) Any medical prescription or other order for liquor presented to any person entitled to sell liquor with the object of procuring the same may be retained by such person before supplying such liquor for such time as may be necessary to enable the person to whom such prescription or other order is presented to ascertain whether the same was signed by the medical practitioner by whom it purports to be signed and whether it is in other respects bona fide.

Where prescription not used bona fide.

(2) If it appears that the prescription or other order mentioned in the preceding subsection was not signed by the practitioner by whom it purports to be signed, or was obtained irregularly, or was being used for the purpose of securing liquor for persons for whom such liquor was not intended, the person presenting such prescription or other order shall be liable to arrest without a warrant by any inspector, constable or officer exercising jurisdiction under *The Ontario Temperance Act* and may be brought before a magistrate for attempting to obtain liquor illegally.

Penalty.

(3) Any person charged under the preceding subsection with attempting to obtain liquor illegally shall on conviction therefor incur the penalties provided by section 59 of *The Ontario Temperance Act*.

1916, c. 50.

Obtaining prescription improperly.

(4) Any person who by an improper means obtains a medical prescription or other order for liquor and any person who uses or attempts to use, either himself or by or through any other person any such prescription or any prescription or other order for liquor which he is not lawfully entitled to use, whether improperly obtained or not, and any person knowingly acting on behalf of any person hereinbefore men-



tioned, or who sells or gives to any other person any prescription or other order for liquor however obtained, shall be guilty of an offence against this Act and shall on conviction incur the penalties provided by Section 59 of the said Act. 1919, c. 60, s. 18; 1920, c. 78, s. 6.

51c.—(1) Notwithstanding anything in *The Ontario Temperance Act* contained the Board of License Commissioners for Ontario may, subject to the provisions herein after contained, issue an order refusing to sell or supply liquor to any of the following persons:

Board authorized to refuse supply of liquor to doctors, etc., under certain circumstances.

- (a) A medical practitioner for any cause which the Board may think sufficient;
- (b) A person holding a prescription for liquor issued by a medical practitioner of the class mentioned in clause (a) unless he satisfies the person having charge of the dispensary that the prescription has been obtained bona fide;
- (c) A druggist who has in the opinion of the Board used or disposed of an unreasonable quantity of liquor without satisfactorily accounting for the same, or who is in default in making the sworn returns required by the Act;
- (d) A dentist for any of the reasons mentioned in clause (c);
- (e) A veterinary surgeon for any of the said reasons.

(2) In the case of a person mentioned in clause (b) of subsection 1, he may be required to show by statutory declaration that he obtained the prescription in question in a proper manner and that the liquor thereby prescribed was intended for himself or some member of his family to be used medicinally only.

Proof may be required from holder of prescription.

(3) The proper officer of each of the governing bodies having authority over the persons referred to in this section shall, on application, supply the Board with a list giving the

Lists to be supplied by medical council, etc.

names and addresses of their respective members in good standing. 1920, c. 78, s. 7.

Supplying  
to minors.

52. Liquor shall not be given, sold or otherwise supplied to any person apparently under the age of twenty-one years, but this shall not apply to the supplying of liquor to a person under the age of twenty-one years for medicinal purposes only by the parent or guardian of such person or by a druggist upon the prescription of a duly qualified medical practitioner. 1916, c. 50, s. 52.

Penalty for  
sale, etc.,  
by clubs.

53.—(1) Every society, association or club heretofore or hereafter formed or incorporated, and every unincorporated society, association or club, and every member, officer and servant thereof, or person resorting thereto, who sells or barter or therein gives liquor to any member thereof or to any other person, and every person who directly or indirectly keeps or maintains, by himself or by associating or combining with any other or others, or in any manner aids, assists or abets in keeping or maintaining, any clubhouse, club or association room or hall or other place in which any liquor is received or kept for the purpose of use, gift, barter or sale as a beverage, or for distribution or division among the members of any society, club or association by any means whatever, and every person who uses, barter, sells or gives away or assists or abets another in bartering, selling or giving away any liquor so received and kept, shall be held to have violated section 40 of this Act and shall incur the penalties provided for the sale of liquor without license.

Keeping  
liquor in  
clubs.

(2) The keeping or having any liquor in the house, hall or building, or in any room or place occupied or controlled by any such club, association or society, or by any persons associating or combining together as aforesaid, shall be a violation of subsection 1 of section 41 of this Act.

Proof of  
consumption  
on  
premises.

(3) Proof of consumption or intended consumption of liquor in such premises by any member of any such club, association or society, or person who resorts thereto, shall be conclusive evidence of sale of such liquor. 1916, c. 50, s. 53 (1)—(3).

(4) The occupant of such premises or any member of the club, association or society, or person who resorts thereto, shall be taken conclusively to be the person who has or keeps or sells therein such liquor and any liquor found on such premises shall be liable to seizure and removal in the manner provided by this Act. 1916, c. 50, s. 53 (4); 1917, c. 50, s. 19.

Liability  
of occupant  
and mem-  
bers.

54. If the occupant or any member of the family of the occupant of any private dwelling house or of any part thereof is convicted of any offence against any of the provisions of this Act committed in or in respect of such house the same shall be taken to have ceased to be a private dwelling house within the meaning of this Act during the time the person so convicted occupies the said house or any part thereof, and any house or portion of a house to which such occupant may remove within one year from the date of such conviction, shall be deemed to have ceased to be a private house within the meaning of this section. 1916, c. 50, s. 54; 1920, c. 78, s. 8.

Occupant  
of private  
dwelling.

Prior to June 4, 1920, when the words "or any member of the family of the occupant" were inserted in the section, in order that the house should lose its character as a private dwelling house, it was necessary that the head of the house should be convicted. *R. v. Condola* (1918), 30 Can. Cr. Cas. 298, 43 O.L.R. 591.

However, a conviction of a member of the family of the occupant prior to the date of the amendment does not operate to prevent the occupant from now keeping liquor in the house, as the amendment was not stated to be retroactive. *R. v. Goldman, Coatsworth Co. J. York*, unreported.

When a member of the family of the occupant is convicted the place to which he may remove is a legal place within the meaning of the Act, but it is not clear that the occupant himself enjoys such a wide privilege although he may not have been convicted. The amendment says "and any house or portion of a house to which such occupant may remove within one year. . . . shall be deemed to have ceased to be a private house within the meaning of this section." No distinction seems to have been made in the amendment between an oc-

cupant, a member of whose family has been convicted and an occupant who has been himself convicted.

But in view of the fact that no ban has been put on the house to which the convicted member of the family may remove, it seems only fair to assume that the amendment is intended to apply to an occupant who has been himself convicted, or to one a member of whose family has been convicted and continues to reside with him after he (the occupant) has removed to another house within the term mentioned.

The section seems to make it clear that where the offence is committed by the occupant in, or in respect of any private dwelling house, that house and any house to which he may remove within one year after the offence is committed remains an illegal place as long as such occupant continues to reside there.

Fatal accidents caused by use of liquor.

55.—(1) Whenever any person has drunk liquor to excess and, while in a state of intoxication from such drinking, has come to his death by suicide or drowning, or perishing from cold or other accident caused by such intoxication, the person or persons who furnished or gave the liquor to such person when in a state of intoxication, or on whose premises it was obtained by such intoxicated person while intoxicated, shall be liable to an action for a wrongful act and as a personal wrong, and subject to the provisions of subsection 2, such action may be brought under *The Fatal Accidents Act*, and the amount which may be recovered as damages shall not be less than \$100 nor more than \$1,500.

Rev. Stat. c. 151.

Limitation of actions.

(2) Any such action shall be brought within six months from the date of the death or such intoxicated person and not afterwards. 1916, c. 50, s. 55 (1), (2).

Person found intoxicated compellable to disclose name of persons from whom liquor was obtained.

(3) Where a person is found upon a street, highway or in any public place in this Province in an intoxicated condition he shall be guilty of an offence against this Act, and upon any prosecution for such offence he shall be compellable to state on oath the name of the person from whom and the place in which he obtained the liquor which caused the intoxication, and in case of his refusal to do so he shall be

imprisoned for a period not exceeding three months or until he discloses such information, and the provisions of this subsection shall apply to any person convicted of having liquor illegally in his possession or under his control within the meaning of any section of this Act. 1916, c. 50, s. 55 (3) *Part*; 1920, c. 78, s. 9 *Part*.

1916,  
c. 50, s. 55,  
compelling  
person  
having  
liquor  
illegally  
to state  
name of  
vendor.

(a) In this section "public place" shall include any place, building or public conveyance to which the public habitually resort or to which the public generally are admitted either free or upon payment of any charge or fee or by the purchase of ticket or otherwise. 1916, c. 50, s. 55 (3) *Part*;

(4) Any such intoxicated person and any person found committing the offence of selling, giving or drinking liquor upon a street, highway or in any public place may be arrested without a warrant. 1918, c. 40, s. 14.

Arrests  
without  
warrant.

This sub-section added to sec. 55 in 1918, authorizes the arrest of the accused without a warrant, where he is found committing the offence upon a street, highway, or in any public place. The right to arrest a man without a warrant in cases not covered by this subsection is questionable. Middleton, J., in *R. v. Hanley*, 30 Can. Cr. Cas. 63, 41 O.L.R. 177, gave his opinion prior to this amendment that there was no right to arrest without a warrant.

The proceedings before the Magistrate will not be invalidated by reason of the irregularity or illegality of the process by which the accused was brought before him. *R. v. Hanley*, 30 Can. Cr. Cas. 63, 41 O.L.R. 177.

(5) Where a person is convicted of being found drunk or disorderly in a public place and such person has within three months been twice convicted of any such offence he may be committed by the magistrate by whom he is so convicted to gaol or to an industrial farm for a period not exceeding three months. 1920, c. 78, s. 9 *Part*.

Conviction  
for drunken-  
ness after  
two previous  
convictions.

## RESTRICTIONS OF SALE TO INEBRITES.

Inebriates,  
prohibition  
to.

**55a.**—(1) Any person who has the habit of drinking liquor to excess, may be prohibited from having liquor in his possession except under the order of a duly qualified medical practitioner or from purchasing or procuring or attempting to purchase or procure liquor.

Order of  
prohibition.

(2) Any justice of the peace having jurisdiction in any place in which a person having the habit of drinking liquor to excess resides may, upon proof of such habit, either in open court or by affidavit, issue an order directed to the person having such habit prohibiting such person from having liquor in his possession or from purchasing or procuring or attempting to purchase or procure liquor. 1917, c. 50, s. 20 *Part*; 1918, c. 40, s. 6.

Action by  
license in-  
specter on  
request of  
relatives.

(3) The license inspector for the county or district in which any person having such habit resides may of his own motion, or at the request of the husband, wife, parent, child of twenty-one years or upwards, brother, sister, master, guardian or employer of any such person, or the parent, brother or sister of the husband or wife of such person, or the guardian of any child or children of such person, give notice in writing, signed by him, to the person having such habit, forbidding him either directly or indirectly to purchase or procure liquor from any person whomsoever, or to have liquor in his possession.

Notice to  
common car-  
riers not  
to supply.

(4) After the service of any such order or notice mentioned in the two preceding paragraphs, notice may be given by such justice of the peace or inspector to any railway or express company, or to any common carrier, or to any other person, not to deliver liquor to the person having such habit, and, after the service of such notice, any liquor addressed to such person may be delivered by such railway or express company, common carrier or other person, to the license inspector of the county or license district in which the person having such habit resides, and such delivery shall exempt the person or company making such delivery from any responsibility in respect thereof, and the liquor thus delivered

may be confiscated by order of a magistrate having jurisdiction in the place in which such delivery was made, and such liquor may thereafter be dealt with by the Minister in the sameway as other liquor which has been forfeited under this Act.

(5) Any order of prohibition issued by a justice of the peace, and any notice given by an inspector in pursuance of this section, shall remain in force until countermanded or otherwise legally set aside. 1917, c. 50, s. 20 *Part.*

Duration  
of order.

(5a) Irrespective of any provisions relating to appeals, any order made by a justice of the peace under subsection 2 of this section 55a, and any notice given by an inspector under subsection 3 thereof may be set aside by the judge of the county or district court of the county or district in which the person affected by such order or notice resides, at any time after the expiration of six months from the date of such order or notice, upon any ground which such judge may think sufficient.

Setting  
aside order  
forbidding  
sale to  
inebriate.

(5b) The person desiring to make the application to set aside the order or notice mentioned in the preceding subsection shall obtain from the judge an appointment, stating the time and place at which such application will be heard, and a copy of such appointment shall be served upon all parties interested at least ten days before the date of hearing, and any such party, as well as the applicant, may give evidence upon oath touching the matter in question, and in the event of any such order or notice being set aside, a copy of the judgment shall be served upon all parties affected thereby. 1918, c. 40, s. 4.

Appointment  
and notice  
of hearing.

(6) Any person served with any such order of prohibition or notice as hereinbefore mentioned, may, within thirty days thereafter, appeal to the county judge or district judge in the county or district in which such person resides, by giving ten days' previous notice thereof to the person issuing such order or giving such notice, and stating the time and place at which such appeal will be heard, and the judge may hear evidence of all parties and their witnesses, and may make

Appeal to  
county or  
district  
judge.

such order as the circumstances of the case warrant. 1917, c. 50, s. 20 Part.

Form of order of justice of the peace.

(7) Any order of prohibition issued by a justice of the peace under this section may be in the following form:—

To A.B. of *(insert name and place of residence of the person to be prohibited)*.

Take notice that in pursuance of the powers in me vested by *The Ontario Temperance Act*, I hereby prohibit you from having liquor in your possession and from purchasing or procuring or attempting to purchase or procure liquor from any person whomsoever, on the ground that you are a person having the habit of drinking liquor to excess. And further take notice that if you contravene this prohibiting order you shall be subject to the penalties provided by the Act in that behalf.

Dated this                      day of                      19 .

Signature of J.P.

A notice by the inspector may be in the following form:—

To A.B. of *(as in the previous form)*.

Form of notice by inspector.

Take notice that I have been required, in pursuance of the statute in that behalf, to give you notice not to purchase or procure or attempt to purchase or procure liquor from any person whomsoever or to have liquor in your possession, you being a person having the habit of drinking liquor to excess, and that if you disobey, you will be subject to the penalty provided by the Act.

Dated this                      day of                      19 .

Inspector.

Notice to a railway or express company or other person may be in the following form:—

Form of notice to railway company, etc.

Take notice that A.B. of.....has been prohibited from having liquor in his possession, he being a person having the habit of drinking liquor to excess, and that after the service upon you of this notice you are required not to deliver to



him or to any person for him, any liquor consigned to him which may come into your hands, and any such liquor shall be delivered to the license inspector of the district, whose name and address is given below, and for you so doing, this notice shall be your sufficient warrant and authority.

Dated this                    day of                    19 .

Signature of person giving such notice.

Give name and address of the inspector.

1917, c. 50, s. 20 *Part*; 1918, c. 40, s. 7.

(8) Any notice or order issued under this section may be served by the inspector by registered letter, and proof of the mailing thereof shall be sufficient for all purposes under this section. 1917, c. 50, s. 20 *Part*.

Service of  
notice or  
order.

(9) After service of such notice or prohibition, if any other person with a knowledge of the notice or prohibition gives, sells or purchases for or on behalf of the person with regard to whom the notice or prohibition has been served, or for his or her use any liquor, such other person shall be deemed to be guilty of contravention of this section. 1917, c. 50, s. 20 *Part*; 1919, c. 60, s. 15.

Contra-  
ven-  
tion of  
section.

(10) Any person wilfully contravening any provision of this section shall be guilty of an offence against this Act, and shall incur the penalties provided by section 58 thereof. 1917, c. 50, s. 20 *Part*; 1918, c. 40, s. 8.

Offence.

(11) This section shall not apply to liquor supplied to or for a prohibited person upon the order of a legally qualified medical practitioner.

Exception  
as to  
medical  
practitioner.

(12) The proceedings to be taken under this section shall be similar to the proceedings authorized by section 70 of this Act, so far as the same apply. 1917, c. 50, s. 20 *Part*.

Procedure.

Dwelling-house in which inhibited person resides not to be deemed a private dwelling-house.

(13) The private dwelling house in which any person resides who has been served with an order of prohibition issued by a justice of the peace under subsection 2 of this section 55*a*, or with a notice in writing, signed by an inspector under subsection 3 of this section, shall, during the time such order or notice is in force, be deemed to have ceased to be a private dwelling house within the meaning of this Act. 1918, c. 40, s. 5.

Persons who furnish the liquor liable for certain injuries committed by person intoxicated.

56. If a person in a state of intoxication assaults any person, or injures any property, the person who furnished him with the liquor which occasioned his intoxication, if such furnishing was in violation of this Act, or otherwise in violation of law, shall be jointly and severally liable to the same action by the person injured as the person intoxicated may be liable to; and the person injured, or his legal representatives, may bring either a joint and several action against the person intoxicated and the person or persons who furnished such liquor, or a separate action, against either or any of them. 1916, c. 50, s. 56.

Money paid for liquor sold contrary to this Act may not be recovered.

57. Any payment or compensation for liquor furnished in contravention of this Act or otherwise, in violation of law, whether made in money or securities for money, or in labour or property of any kind, shall be held to have been received without any consideration, and against justice and good conscience, and the amount or value thereof may be recovered from the receiver by the party who made the same; and every sale, transfer, conveyance, lien and security, in whole or part, made, granted, or given, for or on account of liquor so furnished in contravention of this Act, or otherwise in violation of law, shall be wholly null and void, save only as regards subsequent purchasers or assignees for value, without notice; and no action of any kind shall be maintained, either in whole or in part, for or on account of any liquor so furnished in contravention of this Act, or otherwise in violation of law. 1916, c. 50, s. 57.

First offence. Penalty for breach of sections 7, 37, 40*a*, 49, 53 and 55*a*.

58.—(1) Every person guilty of a contravention of any of the provisions contained in sections 7, 37 40*a*, 41 (except as provided in clause *b* of subsection 2 of this section), 49, 53, and 55*a* of this Act, shall for a first offence incur a pen-

alty of not less than \$200 nor more than \$1,000, and in default of immediate payment shall be imprisoned for a period of not less than three, nor more than six months unless the penalty and costs are sooner paid, and for a second or any subsequent offence, shall incur the like penalty as for a first offence, and in addition thereto shall be imprisoned for a period of not less than two, nor more than four months. 1916, c. 50, s. 58; 1917, c. 50, s. 21, amended. 1922 amended.

Second  
offence.

(2) (a) Except as otherwise provided in this subsection, every person guilty of a contravention of any of the provisions of section 40 of this Act, shall for a first offence incur a penalty of not less than \$200 and not more than \$2,000, and in addition thereto shall, in the discretion of the convicting magistrate, be imprisoned for a period of not more than three months; and for a second or any subsequent offence shall incur the like penalty as for a first offence, and in addition thereto shall be imprisoned for a period of not less than three, nor more than six months. 1916, c. 50, s. 58; 1917, c. 50, s. 21; amended. 1922 amended.

First  
offence.  
Penalty for  
breach s. 40.

Second  
offence.

(b) Every person guilty of a contravention of paragraph (a) of subsection 1 of section 41 shall incur a penalty of not less than \$100, nor more than \$1,000 and in default of immediate payment shall be imprisoned for a period of not more than six months unless the penalty and costs are sooner paid; and for a second or any subsequent offence shall incur the like penalty as for a first offence and in addition thereto shall be imprisoned for a period of not less than two months nor more than six months. 1920, c. 78, s. 11, amended. 1922 amended.

First  
offence.  
Penalty for  
breach s. 41  
(1) (a).

Second  
offence.

(3) Where any person is convicted of an offence against section 40 of this Act, and the magistrate finds upon the evidence that the liquor in respect of which such conviction is had, is liquor which has not been lawfully manufactured or which has been lawfully manufactured, but has since been adulterated with some deleterious substance, he shall in ad-

Liquor not  
lawfully  
manufactured, and  
adulterated  
liquor.

dition to any other penalty which may be imposed under subsection 2 of this section be imprisoned for a period of not less than three months, nor more than eighteen months. 1922 amended.

Sec. 58 of the Ontario Temperance Act 1916, and sec. 21 of the Ontario Temperance Amendment Act 1917 repealed 1922.

It is not necessary to attempt to levy distress before imprisonment. The words of the section are "and in default of immediate payment." *R. v. Martin* (1917), 39 D.L.R. 635, 29 Can. Cr. Cas. 189, 41 O.L.R. 79.

See sec. 744 and 745 Criminal Code made applicable by sec. 4, Summary Convictions Act, R.S.O. 1914, ch. 90, which is made applicable to the Ontario Temperance Act by sec. 72.

The power to impose imprisonment under secs. 58-59 authorises the imposing of hard labor. Interpretation Act, R.S.O. 1914, ch. 1, sec. 25; *R. v. Powell* (1920), 57 D.L.R. 741, 34 Can. Cr. Cas. 240, 48 O.L.R. 492.

In determining the sentence to be imposed under sec. 58, the Magistrate ought not to increase the penalty because he believes the accused is guilty of another offence with which he has not been charged. *R. v. Harris*, 40 D.L.R. 684, 30 Can. Cr. Cas. 13, 41 O.L.R. 366.

But there can be no objection to the Magistrate receiving evidence as to all the surrounding circumstances in order to determine the proper punishment in each case, or otherwise the one who flagrantly defies the law would receive the same punishment as one who innocently transgresses.

But it is improper for a Magistrate to increase the punishment because he believes the accused or his witnesses have committed perjury. *R. v. De Angelis* 34 Can. Cr. Cas. 12, 48 O.L.R. 160.

A conviction for a second or subsequent offence must be a

conviction for a second or subsequent offence charged as such. *R. v. Berlin Lion Brewery Ltd.* (1919), 31 Can. Cr. Cas. 155, 45 O.L.R. 340.

It is not necessary that the previous offence shall have been made under the same section as that under which the second charge is laid. A conviction under any of the enumerated sections would render a later offence under any other of the enumerated sections a second offence. *R. v. Johnston* 58 D.L.R. 452, 36 Can. Cr. Cas. 295, 49 O.L.R. 74.

But an offence under any of the sections enumerated in sec. 58 would not render a subsequent conviction for an offence under any of the sections enumerated in sec. 59 a second or subsequent offence and vice-versa.

A second or subsequent offence must be an offence committed after the accused was previously convicted. *R. v. Robins* 35 Can. Cr. Cas. 1, 48 O.L.R. 527.

**59.** Every person who offends against any of the provisions contained in sections 35, 36, 42, 47, 50, 51 and 52 of this Act, or any of them, shall be liable on summary conviction to a penalty for the first offence of not less than \$50 nor more than \$300, and in default of immediate payment to imprisonment for not less than two months nor more than four months, and for the second offence to a penalty of not less than \$100 nor more than \$500, and in default of immediate payment to imprisonment for a term of not less than four months nor more than eight months; and if the offence was committed by a licensee, or by any person acting under his instructions or with his privity or consent, the license of such licensee shall thereupon become forfeited and void, and he shall be incapable of becoming a licensee under this Act for a period of three years thereafter. 1916, c. 50, s. 59. Penalty.

*R. v. Berlin Lion Brewery Ltd.* 31 Can. Cr. Cas. 155, 45 O.L.R. 340.

**60.** For every offence against this Act or any of the pro- Penalty.

visions thereof, for which a penalty or penalties has or have not been specially provided by this Act, the person committing the offence shall be liable on summary conviction to a penalty of not less than \$10 nor more than \$100, and in default of immediate payment to imprisonment for a period of not less than ten days nor more than two months. 1916, c. 50, s. 60.

Doing of anything forbidden to be deemed an offence against Act.

60a. The commission of any Act or thing forbidden by this Act shall be deemed to be an offence against *The Ontario Temperance Act* whether so declared or not. 1920, c. 78, s. 18.

Officers guilty of an offence.

60b. Every person who being,—

(a) An officer appointed to enforce or whose duty it is to enforce the provisions of this Act, or

(b) A person employed permanently or temporarily, or for a particular occasion or in any other manner in the enforcement of this Act, or

(c) A police constable or peace officer, is guilty of a contravention of any of the provisions of this Act, shall upon conviction, in addition to any other penalty, be imprisoned for a period of not less than one month, nor more than six months. 1922.

#### ENFORCEMENT AND PROSECUTIONS.

Duty of enforcing Act.

61.—(1) The duty of seeing that the provisions of this Act are complied with and of enforcing the same and of prosecuting persons offending against such provisions shall devolve upon the Board and the inspectors and other officers appointed pursuant to this Act. But nothing herein contained shall prevent or be construed to prevent any person from laying an information or prosecuting in respect of any offence or supposed offence against the provisions of this Act. 1916, c. 50, s. 61 (1).

Information.

(2) All informations or complaints for the prosecution

of any offence against any of the provisions of this Act, shall be laid or made in writing, within three months after the commission of the offence or after the cause of action arose, and not afterwards, before any Justice of the Peace for the county in which the offence is alleged to have been committed, and may be made without any oath or affirmation to the truth thereof, and the same may be according to Form given in Schedule "F" to this Act or to like effect. 1916, c. 50, s. 61 (2); 1919, c. 60, s. 19.

When to  
be laid.

Form.

Where an amendment to a charge in effect sets up a new charge the amendment must be made within three months after the offence was committed. Section 78 in no way repeals the effect of sec. 61. *R. v. Kaplan* (1920), 52 D.L.R. 596, 36 Can. Cr. Cas. 24, 47 O.L.R. 110.

But where the effect of the amendment is not to substitute or add another or different offence, but merely to add words necessary to describe the offence intended to be charged in the information which was insufficiently because incompletely described, it may be made after the three months have elapsed. *R. v. Ayer* (1908), 17 O.L.R. 509.

(3) All prosecutions under this Act, whether for the recovery of a penalty or otherwise, shall take place before two or more justices of the police or a police magistrate having jurisdiction, except in the case of a licensee or for any offence committed on or with respect to licensed premises which may be tried by one Justice of the Peace. 1916, c. 50, s. 61 (3).

All other  
prosecutions  
may be  
before two  
or more  
Justices.

Licensee as referred to in this section does not include the holder of a license granted under sec. 146 and a prosecution against a holder of such a license must be heard by two justices. *R. v. Boileau*, 36 D.L.R. 781, 28 Can. Cr. Cas. 144, 38 O.L.R. 607.

62. A provincial inspector shall examine the books and accounts of each local inspector for the purpose of ascertaining whether the same are properly kept and all entries properly made, and shall examine into the accounts and mode of inspection of each inspector and into the way in which he enforces the provisions of this Act, and shall ascertain

Duties of  
Provincial  
Inspector.

whether or not the duties of the local inspector are faithfully and efficiently performed, and may hold investigations into the conduct of any local inspector as to the enforcement of this Act or any alleged violation or evasion of it, and for that purpose shall have and may exercise all the powers which may be conferred upon a commissioner appointed under *The Public Inquiries Act*. 1916, c. 50, s. 62.

Rev. Stat.  
c. 18.

Duty of  
inspectors.

63. Every local inspector shall perform the duties specially devolving upon him under any provisions of this Act and shall inspect all licensed premises and other premises in his locality where liquor may be lawfully kept for sale, and he shall see that all provisions of this Act are observed and enforced in his district and that all persons offending against such provisions are promptly prosecuted, and he shall perform such other duties as may be assigned to him in respect of this Act and its enforcement by the Board. 1916, c. 50, s. 63.

Inspectors,  
policemen,  
etc., to be  
within Act.

64.—(1) Every inspector and Provincial officer appointed under this Act and every policeman or constable shall be deemed to be within the provisions of this Act, and it shall be his duty to carry out and enforce the same; and, when any information is given to any such inspector, policeman or constable that there is cause to suspect that some person is violating any of the provisions of this Act, it shall be his duty to make diligent inquiry into the truth of such information and to enter complaint, in his own name, of such violation before the proper magistrate, without communicating the name of the person giving such information.

Penalty.

(2) Every inspector, policeman or constable neglecting or refusing to carry out and enforce this Act shall incur a penalty of \$10, and may be summarily dismissed from office. 1916, c. 50, s. 54.

Duties of  
officers and  
Crown  
Attorneys  
on receiving  
information  
of infringe-  
ment of  
this Act.

65. Where any information is given to any officer, policeman, constable, or inspector that there is cause to suspect that some person is contravening any of the provisions of this Act, it shall be his duty to make diligent enquiry into the truth of such information, and to enter complaint of such contravention before the proper Court, without communicating the



name of the person giving such information; and it shall be the duty of the Crown Attorney within the county in which the offence is committed to attend to the prosecution of all cases committed to him by an inspector or officer appointed under this Act by the Lieutenant-Governor or by an officer appointed by the council of a municipality under section 120 and the council appointing such officer shall be responsible for the payment of the proper fees of the Crown Attorney when so employed by such officer. 1916, c. 50, s. 65; 1918, c. 40, s. 15.

Duties of officers.

66.—(1) Any officer, policeman, constable or inspector may, for the purpose of preventing or detecting the contravention of any of the provisions of this Act which it is his duty to enforce, at any time enter into any and every part of any place of public entertainment, shop, warehouse or other place wherein refreshments or liquors are sold, or reputed to be sold or kept in contravention of this Act, and may make searches in every part thereof and of the premises connected therewith, as he may think necessary for such purpose. 1916, c. 50, s. 66 (1); 1917, c. 50, s. 22.

Right of search.

Section 66 gives a right to search for liquor without a warrant. This right is given for the purpose of preventing and detecting the contravention of any of the provisions of the Act. It does not require a belief on the part of the officer that an offence has been, or is being committed as is required by sec. 70. *Fleming v. Spracklin* (1920), 56 D.L.R. 518, 35 Can. Cr. Cas. 40, 48 O.L.R. 533. Affirmed in 50 O.L.R. 289. *R. v. McDonald* (1921), 36 Can. Cr. Cas. 259; *R. v. Grassi* (1917), 40 O.L.R.

(2) Every person being therein, or having charge thereof, who refuses or fails to admit such officer, policeman, or constable, or inspector demanding to enter in pursuance of this section in the execution of his duty, or who obstructs or attempts to obstruct the entry of such officer, policeman, constable or inspector, or any such searches as aforesaid, shall be guilty of an offence against this Act. 1916, c. 50, s. 66.

Penalty for refusing to admit officer.

Search  
warrant.

67. Any magistrate having jurisdiction upon information by any officer, policeman, constable or inspector that there is reasonable ground for belief that any liquor is being kept for sale or disposal or otherwise contrary to the provisions of this Act in any house or place within the jurisdiction of such magistrate, may issue a warrant under his hand, by virtue whereof the person named in such warrant or any constable to whom it is directed or delivered, at any time or times within ten days from the date thereof, may enter, and, if need be, by force, the place named in the warrant, and every part thereof, or of the premises connected therewith, and examine the same and search for liquor therein; and for this purpose the person executing the warrant may, with such assistance as he deems expedient, break open any door, lock, or fastening of such premises, or any part thereof, or of any closet, cupboard, box or other receptacle likely to contain any such liquor; and in the event of any liquor being so found on the said premises, the occupant thereof shall until the contrary is proved, be deemed to have kept such liquor for the purpose of sale contrary to the provisions of section 40. 1916, c. 50, s. 67; 1917, c. 50, s. 23.

Unlawful  
keeping of  
liquor to be  
evidence of  
illegal  
dealings  
therein.

Where liquor is found under a search warrant the presumption under this section that the liquor is kept for sale is against the occupant of the premises and not against the owner of the liquor who may have stored it on the premises. *R. v. Riddell*, 28 Can. Cr. Cas. 217, 38 O.L.R. 222.

The provisions of secs. 67 and 88 do not conflict but overlap and the presumption raised against the accused under sec. 88 is not restricted to the cases under sec. 67. *R. v. Collina* 55 D.L.R. 29, 34 Can. Cr. Cas. 109, 48 O.L.R. 199.

The officer laying the information must satisfy the Magistrate that there is reasonable ground for belief and not mere suspicion. *Fleming v. Spracklin* 56 D.L.R. 518, 35 Can. Cr. Cas. 40, 48 O.L.R. 533; affirmed, 50 O.L.R. 289. Section 67 referred to in *R. v. McDonald* 36 Can. Cr. Cas. 259; *R. v. Gosling* (1921), 37 Can. Cr. Cas. 66, 50 O.L.R. 142.

Section 70 (1 and 2). Section 70 does not create an offence and there is nothing to prevent the seizure of liquor under sec. 70 and the prosecution of an offence under sec. 40 or 41. *R. v. Le Clair* (1917), 28 Can. Cr. Cas. 216, 39 O.L.R. 436; *R. v. Hagen* (1920), 53 D.L.R. 479, 33 Can. Cr. Cas. 208, 47 O.L.R. 384; *R. v. Hogan* (1920), 47 O.L.R. 243.

Before an officer is justified in exercising the right of search under this section he must believe that liquor is kept in contravention of the Act; mere suspicion is not sufficient. *Fleming v. Spracklin* 56 D.L.R. 518, 35 Can. Cr. Cas. 40, 48 O.L.R. 533.

In *Fleming v. Spracklin* it was decided that a boat is not a vehicle following *In re Sault Ste. Marie Provincial Election* (1905), 10 O.L.R. 356. The section was amended after this decision to include any boats on the inland water of Canada within Ontario. *R. v. McDonald*, 36 Can. Cr. Cas. 259.

67a.—Every police magistrate for the City of Toronto shall be *ex officio* a Justice of the Peace in and for any city, town, county, provisional county, or provisional judicial district, or other locality in Ontario for the purpose of taking information and issuing search warrants under the provisions of *The Ontario Temperance Act* or any of its amendments and making the same returnable therein before any justice of the peace or police magistrate having jurisdiction in the place or locality in which the said search warrant is executed. 1920, c. 78, s. 10.

Police magistrates for Toronto to be *ex officio* J.P.'s for Ontario for certain purposes.

68.—(1) Where any inspector, policeman, constable or officer in making or attempting to make any search under or in pursuance of the authority conferred by the next preceding two sections or under the warrant mentioned in the next preceding section, finds in an unlicensed house or place any liquor which in his opinion is unlawfully kept for sale or disposal or otherwise contrary to this Act, he may forthwith seize and remove the same, and the vessels in which the same is kept, and upon the conviction of the occupant of such

Seizure of liquor found on unlicensed premises.

house or place, or of any other person for keeping liquor for sale in such house or place without license or otherwise in contravention of this Act, the magistrate making such conviction, may in and by such conviction, or by a separate or subsequent order, declare such liquor and vessels, or any part thereof, to be forfeited to His Majesty, to be destroyed or otherwise dealt with in such manner as the Minister may direct. 1916, c. 50, s. 68 (1); 1917, c. 50, s. 24.

Officer may demand names and addresses of frequenters of unlicensed premises.

(2) Any inspector, policeman, constable or officer having in pursuance of the next two preceding sections or either of them entered any unlicensed premises in which he seizes or from which he removes any liquor, may demand the name and address of any person found therein, and if such person refuses to give his name and address, or if the inspector, policeman, constable or officer has reasonable ground to suppose that the name or address given is false, may examine such person further as to the correctness of such name or address, and may if such person fails upon such demand to give his name or address or to answer satisfactorily the questions put to him by the inspector, policeman, constable or officer, apprehend him without warrant and carry him, as soon as practicable, before a Justice of the Peace.

Penalty upon persons found.

(2) Any person so found on the premises who in answer to the inspector, policeman, constable or officer, refuses to give his name and address or gives a false name or address, or gives false information with respect to such name or address, or fails to answer satisfactorily the questions put to him by the inspector, policeman, constable or officer, shall incur a penalty of not less than \$10 nor more than \$20, and in default of payment shall be imprisoned for a period of not less than twenty and not more than forty days. 1916, c. 50, s. 68 (2), (3).

If no conviction liquor should be returned.

69. If the occupant or other person as aforesaid be not convicted of keeping the liquor or any part thereof for sale or otherwise in contravention of this Act, the inspector, policeman, constable or officer so seizing the liquor shall return the same to the place where such seizure was made; and he and any other person acting with him, or by or under his

direction, and the policeman, constable or other officer so acting shall be a public officer within the meaning of *The Public Authorities Protection Act*. 1916, c. 50, s. 69; 1917, c. 50, s. 25. Rev. Stat.,  
c. 89.

70.—(1) Where an inspector, policeman, constable or officer finds liquor in transit or in course of delivery upon the premises of any railway company, or at any wharf, railway station, express office, warehouse or other place, and believes that such liquor is to be sold or kept for sale or otherwise in contravention of this Act, he may forthwith seize and remove the same together with the package or packages in which such liquor is contained. 1916, c. 50, s. 70; 1917, c. 50, s. 26 (1). Right to  
seize liquor  
in transit.

(2) Any inspector, policeman, constable or officer, if he believes that liquor intended for sale or to be kept for sale or otherwise in contravention of this Act, is contained in any vehicle on a public highway or elsewhere, or in any boat on the inland waters of Canada within the Province of Ontario, or is concealed upon the land of any person, may enter and search such vehicle or boat and may enter upon and search such land and seize and remove any liquor found there and the vessels in which the same is kept; or if he finds either upon the public highway or elsewhere, any trunk, box, valise, bag or other receptacle whatever which he believes contains liquor for sale or otherwise in contravention of this Act, he may forthwith seize and remove the same together with the package or packages in which such liquor is contained whether in the custody of or under the control of any person or not. 1916, c. 50, s. 70 (2); 1917, c. 50, s. 26 (2); 1921, c. 73, s. 5. Or to search  
vehicle and  
lands for  
liquor.

(3) Where liquor has been seized under subsection 1 or subsection 2 the person seizing the same shall give information under oath before a justice of the peace, who shall thereupon issue his summons directed to the shipper, consignee or owner of the liquor if known, calling on him to appear at a time and place named in the summons and show cause why such liquor should not be destroyed or otherwise dealt with as provided by this Act. Proceedings  
before a  
justice in  
such case.

## R. v. Belanger (1921), 20 O.W.N. 61.

Service of  
summons.

(4) It shall be sufficient service of the summons if the same is delivered to the shipper, consignee or owner, or be left with some grown-up person at the express office, railway station or other place in which the liquor is found or to the owner of the lands on which the same is found.

A tenant is included in the meaning of the word "owner."  
Rex v. Bender 21 O.W.N. 289.

When re-  
turnable.

(5) The summons shall be made returnable within thirty days after the service thereof. 1916, c. 50, s. 70 (3)—(5).

Evidence.

(6) At the time and place named in the summons any person who claims that the liquor is his property and that the same is not intended to be sold or kept for sale or otherwise in violation of this Act may appear and give evidence before the justice, and the justice shall receive such evidence and the evidence of the person who seized the liquor and such other evidence as may be adduced in the same manner as upon a complaint or information made under this Act. 1916, c. 50, s. 70 (6); 1917, c. 50, s. 26, (3).

Liquor  
seized, how  
dealt with.

(7) If no person claims to be the owner of the liquor, or if the justice disallows such claim, and finds that it was intended that such liquor was to be sold or kept for sale or otherwise in contravention of this Act he may order that such liquor and any vessels containing the same shall be forfeited to His Majesty to be destroyed or otherwise dealt with in such manner as the Minister may direct. 1916, c. 50, s. 70 (7); 1917, c. 50, s. 26 (4).

To be re-  
stored to  
owner in  
certain  
cases.

(8) If the justice finds that the claim of any person to be the owner of the liquor is established, and that it does not appear that it was intended to sell or keep such liquor for sale or otherwise in contravention of this Act he shall dismiss the complaint and order that such liquor be restored to the owner. 1916, c. 50, s. 70 (8); 1917, c. 50, s. 26 (5).

(9) If it appears to the justice that such liquor or any part thereof was consigned to some person in a fictitious name or was shipped as other goods, or was covered or concealed in such manner as would probably render discovery of the nature of the contents of the vessel, cask or package in which the same was contained more difficult, it shall be *prima facie* evidence that the liquor was intended to be sold or kept for sale in contravention of this Act.

Shipping in fictitious name evidence of intention to sell unlawfully.

Where liquor was shipped from Montreal to Winnipeg consigned as "Pickles" and was discovered in Ontario it was held that the Magistrate had jurisdiction to enter into an inquiry and all the provisions of the Act applied until it was shewn that the transaction was one to which the Act did not apply.

It was held also that the onus under this sub-section applied and the onus was not displaced. *Re Ontario Temperance Act and Renaud's Application* (1918), 30 Can. Cr. Cas. 426, 44 O.L.R. 238.

"Fictitious name" within the meaning of the section is a name used for the purpose of deceit.

The presumption raised by this sub-section is meant to apply only to liquor seized in transit under sec. 70 and not to charges under other sections of the Act. *R. v. Le Clair*, 28 Can. Cr. Cas. 216, 39 O.L.R. 436.

Where liquor was shipped from Montreal to Toronto the onus was on the defendant to prove that he intended to re-ship the liquor to a foreign country. It was open to the magistrate to disbelieve the defendant and the conviction was sustained. *Rex. v. Barry* 21 O.W.N. 245.

NOTE.—*This case was tried prior to July 19th, 1921.*

(10) Any person other than the actual consignee or his duly authorized agent who obtains or accepts delivery of any liquor from any railway or express company, or other common carrier within this province, shall be guilty of an offence against this Act, and any liquor so delivered may be seized

Accepting delivery of liquor unlawfully.

wherever the same is found and forfeited to His Majesty in the same way as liquor seized in transit under subsection 1 of this section, and the same procedure shall apply. 1918, c. 40, s. 16 (1).

Rev. Stat.,  
c. 69.

(NOTE.—*Liquor seized under this Act cannot be replevined. See The Replevin Act.*)

Records of  
shipments  
to be kept  
by common  
carriers.

**70a.** (1917) Every railway company, express company and other common carrier and every agent of any such common carrier shall keep or cause to be kept at each agency of such company where goods are received for shipment or are delivered, an accurate record of each consignment of liquor received and every delivery of liquor made by them or any of them or by their or either of their clerks, servants or agents, at or from such agency respectively, in a book to be kept for that purpose, and such record shall show the time when such liquor was received and the name and address of the person to whom the same was delivered, and the apparent kind and quantity thereof, and such record shall at all times be open only to the inspection of any inspector, provincial constable or provincial officer, and a copy thereof shall be delivered to any such inspector, constable or officer duly authorized in writing by the Board to demand delivery thereof, upon his demand therefor certified to be a true copy thereof; and the failure to carry out the said provisions of this section shall be an offence against this Act, but no information obtained in this manner by any such inspector or officer shall be communicated to anyone other than the Board, and shall only be used for the purpose for which it was lawfully obtained. Nothing in this section contained shall be deemed to impose any duty or liability upon any such company, carrier or agent, in respect of any consignment not known to such company, carrier or agent to consist of or contain liquor. 1917, c. 50, s. 27.

Prohibited  
areas.

**70a** (1918) In any case of emergency the Lieutenant-Governor in Council may issue a proclamation forbidding any person to have liquor in his possession except under a special permit within the area mentioned in such proclamation and authorizing within such area the seizure without



other warrant or authority and detention for such time as may be authorized of any liquor within such area. The proclamation to remain in force for such period as may be therein determined. The special permit herein referred to may be issued by such person as may be appointed for that purpose by the Lieutenant-Governor in Council. 1918, c. 40, s. 16 (2).

71. Any liquor forfeited under this Act to His Majesty and directed by the Minister to be sold shall be sold to a license holder only and the proceeds after the payment of any lawful costs of carriage and the expenses of the seizure and sale shall be paid to the Treasurer of Ontario for the use of the Province. 1916, c. 50, s. 71.

Disposal  
of liquor  
forfeited.

#### PROSECUTIONS.

72. Except so far as otherwise expressly provided by this Act, the penalties imposed by or under the authority of this Act shall be recoverable under *The Ontario Summary Convictions Act*; and the provisions of the said Act shall apply to every prosecution hereunder. 1916, c. 50, s. 72.

Procedure.

Rev. Stat.,  
c. 90.

Except where there are provisions to the contrary the proceedings on a prosecution are governed by the Ontario Summary Convictions Act, R.S.O. 1914, ch. 90.

The accused is entitled to a postponement of his trial in order to secure witnesses, and the Magistrate ought not to act on information communicated to him by the prosecution in determining whether or not the evidence to be given by the witnesses required by the accused is important. *R. v. Perron* (1920), 36 Can. Cr. Cas. 193.

Any evidence secured by the Magistrate in reference to the offence charged, other than the sworn testimony in the trial is improper, and where such evidence has been obtained the conviction will not be sustained. *R. v. Hayton* (1920), 57 D.L.R. 532, 35 Can. Cr. Cas. 193, 48 O.L.R. 494.

Where the accused has been properly summoned and does

not appear, but counsel appears and represents him, the trial may proceed and a conviction made, even though the service of the summons be irregular. The appearance by counsel is a waiver of any irregularity in the service of the summons. *R. v. Johnson* (1920), 55 D.L.R. 65, 34 Can. Cr. Cas. 98, 48 O.L.R. 203.

Where the accused is regularly summoned and does not appear, the Magistrate may proceed with the trial in his absence, hear the evidence and give judgment convicting or dismissing the case. Section 718 Criminal Code—made applicable by the Summary Convictions Act—*R. v. Coote* (1910), 22 O.L.R. 269.

An irregularity in the arrest of the accused will not invalidate the conviction. *R. v. Hanley* (1917), 30 Can. Cr. Cas. 63, 41 O.L.R. 177.

Section 72 also referred to in *R. v. Martin* (1917), 39 D.L.R. 625, 29 Can. Cr. Cas. 189, 41 O.L.R. 79; *R. v. Hogan* (1920), 47 O.L.R. 243.

There is no rigid rule that it is necessary to make all the evidence given by witnesses intelligible to the accused. *R. v. Grassi*, 40 O.L.R. 359.

Interference  
of magis-  
trates.

73. When any prosecution under this Act is brought for hearing and determination before any police magistrate, no other magistrate shall, unless requested by the first named magistrate, sit or take part therein except for the purposes of making a remand or adjournment by reason of the absence of such police magistrate. 1916, c. 50, s. 73; 1917, c. 50, s. 28.

Depositions  
of witnesses.

74—(1) The Magistrate shall cause the depositions of the witnesses examined before him to be written in a legible hand and on one side only of the sheet of paper on which they are written, and shall read the same over to the witnesses, who shall sign the same.

(2) Instead of proceeding as provided in subsection 1 a stenographer may, with the consent of the magistrate, be employed to take down the evidence or any part thereof in shorthand, and the stenographer before acting shall take oath that he will truly and faithfully report the evidence.

Steno-  
grapher  
may be  
employed.

Stenographer's notes do not necessarily constitute a record of all that took place before the Magistrate. *R. v. Hanley* 30 Can. Cr. Cas. 63, 41 O.L.R. 177.

(3) Where evidence is taken in shorthand it shall not be necessary that the same shall be read over to or be signed by the witness, but it shall be sufficient if the transcript is signed by the Magistrate and is accompanied by an affidavit of the stenographer that it is a true report of the evidence. 1916, c. 50, s. 74.

When so  
taken have  
copies  
verified.

The failure of the Magistrate to comply with the provisions of this section will not invalidate the conviction unless it is shown that the defendant is prejudiced thereby. *R. v. Tugman* 40 O.L.R. 349; *R. v. Leach* (1908), 17 O.L.R. 643; *R. v. McDevitt* (1917), 28 Can. Cr. Cas. 352, 39 O.L.R. 138.

75. Several charges of contravention of this Act committed by the same person on the same day may be included in one and the same information or complaint; provided that such information and complaint and the summons issued thereon contain the time and place of each contravention. 1916, c. 50, s. 75.

Including  
several  
charges in  
one in-  
formation.

76. The description of any offence under this Act in the words of this Act or in words of like effect, shall be sufficient in law and any offence may be charged in the alternative where such alternative is referred to in the same section; and any exception, exemption, proviso, excuse or qualification, whether it does or does not accompany the description of the offence in this Act, may be proved by the defendant, but need not be specified or negatived in the information; but, if it be so specified or negatived, no proof in relation to the matter so specified or negatived shall be required on the part of the informant or complainant. 1916, c. 50, s. 76; 1917, c. 50, s. 29.

Sufficient  
description  
of offence.

May be  
charged in  
alternative.

The charge may be in the alternative where such alternative is referred to in the same section, but the conviction must not be in the alternative. *R. v. Kaplan* 52 D.L.R. 596, 36 Can. Cr. Cas. 24, 47 O.L.R. 110.

Particulars  
to be  
stated in  
charge.

77. In describing offences respecting the sale or keeping for sale or other disposal of liquor, or the having, keeping, giving, purchasing, receiving or the consumption of liquor, in any information, summons, conviction, warrant or proceeding under this Act, it shall be sufficient to state the sale, or keeping for sale or disposal, having, keeping, giving, purchasing, receiving or consumption of liquor simply, without stating the name or kind of such liquor, or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of liquor so sold, kept for sale, disposed of, had, kept, given or consumed, except in the case of offences where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity. 1916, c. 50, s. 77.

Powers as  
to amend-  
ment.

78. Notwithstanding anything in this Act, at any time before judgment the magistrate or justice or justices may amend or alter any information and may substitute for the offence charged therein any other offence against the provisions of this Act; but, if it appears that the defendant has been materially misled by such amendment, the said magistrate, justice or justices, shall thereupon adjourn the hearing of the case to some future day, unless the defendant waives such adjournment. 1916, c. 50, s. 78.

This section does not in any way repeal the provisions of sub-sec. 2 of sec. 61, and any amendment substituting one offence for another must be made within three months from the time the offence is alleged to have been committed. *R. v. Kaplan* 52 D.L.R. 596, 36 Can. Cr. Cas. 24, 47 O.L.R. 110.

If the evidence proves another offence than that charged, the Magistrate cannot convict for that offence unless he amends the information. *R. v. Kallas* (1919), 31 Can. Cr.

Cas. 57. Section 78 referred to in R. v. Faulkner (1920), 57 D.L.R. 549, 34 Can. Cr. Cas. 224, 48 O.L.R. 500.

79. In any prosecution under this Act the police magistrate, justice or justices of the peace, trying the case, may summon any person represented to him as a material witness, in relation thereto; and, if such person refuse or neglect to attend pursuant to such summons, the police magistrate, justice or justices of the peace may issue his warrant for the arrest of such person, and he shall thereupon be brought before the police magistrate, justice or justices of the peace, and, if he refuses to be sworn or to affirm, or to answer any question touching the case, he may be committed to the common gaol of the county or judicial district or to a lock-up, there to remain until he consents to be sworn or to affirm and to answer. 1916, c. 50, s. 79.

Compelling  
attendance  
of wit-  
nesses.

80. Any person summoned as a party to, or as a witness in, any proceeding under this Act may, by the summons, be required to produce at the time and place appointed for his attendance all books and any papers, accounts, deeds and other documents including a license, in his possession, custody or control relating to any matter connected with the said proceeding, and shall be liable to the same penalties for non-production of such books, papers or documents as he would incur by refusal or neglect to attend pursuant to such summons, or to be sworn or answer any question touching the case. 1916, c. 50, s. 80.

Production  
of docu-  
ments.

81. In any prosecution or proceeding under this Act, in which proof is required respecting the issue, transfer or cancellation of any license, a certificate under the hand of a member of the Board shall be *prima facie* proof of the existence, transfer or cancellation of such license, as the case may be, and, in case of issue or transfer, of the person to whom the same was granted or transferred; and the production of such certificate shall be sufficient *prima facie* evidence of the facts therein stated, and of the authority of the member of the Board, without any proof of his appointment or signature. 1916, c. 50, s. 81.

Proof of  
license.

R. v. Boileau 36 D.L.R. 781, 28 Can. Cr. Cas. 144, 38 O.L.R. 607.

Prima facie evidence of sale.

82. Any house, shop, room or other place in which it is proved that there exists a beer pump, or any other appliance similarly to those usually found in hotels and shops where liquors are accustomed to be sold or trafficked in, other than those of common use in private houses, unless it be shown that such articles so found are used for legitimate purposes shall be evidence that it is a place in which liquors are kept or had for the purpose of being sold, bartered or trafficked in, in contravention of this Act; and the occupant of such house, shop, room or other place shall be taken to be the person who has or keeps therein such liquors for sale, traffic or barter therein. 1916, c. 50, s. 82.

Proof of consideration for illegal sale unnecessary.

83. In proving the sale or disposal, giving, purchasing or receiving gratuitously or otherwise, or consumption of liquor, for the purpose of any proceeding relative to any offence under this Act, it shall not be necessary to show that any money actually passed, or any liquor was actually consumed, if the magistrate or justice or justices hearing the case is or are satisfied that a transaction in the nature of a sale or other disposal, giving, purchasing or receiving actually took place, or that any consumption of liquor was about to take place; and proof of consumption or intended consumption of liquor on premises on which such consumption is prohibited, by some person not authorized to consume liquor thereon, shall be evidence that such liquor was sold or given to the person consuming or being about to consume, or carry away the same, as against the occupant of the said premises. 1916, c. 50, s. 83.

Liability of occupant.

84.—(1) The occupant of any house, shop, room or other place in which any sale, barter or traffic, having, keeping or giving liquor, or any matter, act or thing, in contravention of any of the provisions of this Act, has taken place, shall be personally liable to the penalty and punishments prescribed by this Act, notwithstanding such sale, barter or traffic, having, keeping or giving be made by some other person who cannot be proved to have so acted on, under or by, the direc-

tions of such occupant, and proof of the fact of such sale, barter or traffic, having, keeping or giving, or other act, matter or thing by any person in the employ of such occupant or who is suffered to be or remain in or upon the premises of such occupant, or to act in any way for such occupant, shall be *prima facie* evidence that such sale, barter, traffic, having, keeping or giving or other act, matter or thing took place with the authority by the direction of such occupant. 1916, c. 50, s. 84.

This section does not apply to a transaction which takes place in a lane adjacent to a dwelling house. *R. v. McKay* (1919), 32 Can. Cr. Cas. 9, 46 O.L.R. 125.

(2) The person actually selling, or otherwise contravening any of the provisions of this Act is for the purposes hereof styled "the actual offender," whether acting on behalf of himself or of another or others, and the actual offender shall personally incur the penalties prescribed by this Act, and at the prosecutor's option the actual offender may be prosecuted jointly with or separately from the occupant, but both of them shall not be convicted of the same offence, and the conviction of one of them shall be a bar to the conviction of the other of them therefor. 7 Geo. V, c. 50, s. 30.

Liability of occupant of premises for illegal sale.

"Actual offender."

*R. v. Cramer* (1920), 54 D.L.R. 606, 48 O.L.R. 21; *R. v. Maker* 54 D.L.R. 684, 48 O.L.R. 182; *R. v. Ollman* (1921), 19 O.W.N. 563.

(3) Any ship or vessel navigating any of the great lakes or the Rivers St. Lawrence or Ottawa or any of the inland waters of Canada within the Province of Ontario, and whether actually engaged in such navigation or not, shall be deemed to be a "place" within the meaning of this section and the owner, captain, master and other person in command of any such vessel shall be deemed to be the "occupant" thereof and subject to the provisions of this section. 1920, c. 78, s. 12.

Ship or vessel to be deemed a "place."

85. The burden of proving the right to have or keep or sell or give liquor shall be on the person accused of improperly or unlawfully having or keeping or selling or giving such liquor. 1916, c. 50, s. 85.

Burden of proof of right to sell.

R. v. Williams (1916), 27 Can. Cr. Cas. 264; R. v. Warne Drug Co. Ltd., 37 D.L.R. 788, 29 Can. Cr. Cas. 384, 40 O.L.R. 469; R. v. Leduc (1918), 30 Can. Cr. Cas. 246, 43 O.L.R. 290.

Precise description of liquor unnecessary.

**86.** In any prosecution under this Act in respect of any sale, purchase, disposal, giving, having, keeping or receiving of liquor, it shall not be necessary that any witness depose directly to the precise description of the liquor sold, purchased, disposed of, given, had, kept or received, or the precise consideration if any therefor. 1916, c. 50, s. 86.

Onus of proof of license.

**87.** In any prosecution under this Act whenever it appears that the defendant has done any act or been guilty of any omission in respect of which, were he not duly licensed, he would be liable to some penalty under this Act, it shall be incumbent upon the defendant to prove that he is duly licensed and he did the said act lawfully. 1916, c. 50, s. 87.

Proof of possession prima facie evidence of offence.

**88.** If, in the prosecution of any person charged with committing an offence against any of the provisions of this Act in the selling or keeping for sale or giving or keeping or having or purchasing or receiving of liquor, *prima facie* proof is given that such person had in his possession or charge or control any liquor in respect of, or concerning which, he is being prosecuted then unless such person prove that he did not commit the offence with which he is so charged he may be convicted accordingly. 1916, c. 50, s. 88.

This section does not justify a conviction where the proof of possession shews legal possession. Therefore on a charge against an accused of having liquor in a place other than a private dwelling in which he resides and upon it being established that the accused had possession of liquor in his private dwelling, the proof which shifts the onus furnishes the proof which proves his innocence and sec. 88 cannot be applied. R. v. Faulkner 57 D.L.R. 549, 34 Can. Cr. Cas. 224, 48 O.L.R. 500.

Where suspicion only is established and there is no proof of possession sec. 88 cannot be invoked by the prosecution.



R. v. Gosling 37 Can. Cr. Cas. 66, 50 O.L.R. 142.

Section 88 cannot be applied to support a conviction for "having liquor in a place other than the private dwelling in which he resides" where the only evidence is that the accused had a quantity of liquor and later had a lesser amount. R. v. Faulkner (*supra*).

The proper construction and application of sec. 88 has not yet been determined. There are a number of decisions by courts of co-ordinate jurisdiction which conflict in part and do not definitely settle the law. The leading cases in order of the date of the decision are as follows:—R. v. Le Clair, 28 Can. Cr. Cas. 216, 39 O.L.R. 436; R. v. Moore (1917), 30 Can. Cr. Cas. 206, 41 O.L.R. 372; R. v. Kozak (1920), 53 D.L.R. 369, 33 Can. Cr. Cas. 189, 47 O.L.R. 378; R. v. Lemaire (1920), 57 D.L.R. 631, 34 Can. Cr. Cas. 254, 48 O.L.R. 475. In R. v. Le Clair, Middleton, J., says, at pp. 217, 218 (28 Can. Cr. Cas.): "The result is, that wherever there is possession of liquor there is liability to a fine unless the magistrate accepts the evidence of the accused.

There is a statutory presumption of guilt upon proof of custody of the dangerous thing, and the common law rule is reversed—the accused must prove his innocence to the satisfaction of the magistrate, or take the consequences."

In R. v. Moore the same Judge says, at p. 208 (30 Can. Cr. Cas.): "It is proved that liquor was delivered to the accused . . . . so he may be convicted unless he prove that he did not commit the offence with which he is charged."

The section is discussed at length in R. v. Lemaire by Meredith, C.J.C.P., but the opinions expressed there are obiter dictum. The reasoning in this case is nevertheless convincing. The Judge says, at pp. 633, 634 (57 D.L.R.): "Mere possession, charge, or control does not make an accused prisoner *prima facie* guilty of all the crimes of the Ontario Temperance Act calendar. If any one is charged with selling liquor which it is proved he once had, but which now some one else has, he may, not must, be convicted, if

he fails to shew, as he should be able easily to do if innocent, that the change of possession was lawful, whilst if charged with unlawfully having liquor, and the prosecution proves only that the possession was had in the dwelling house in which the accused resides, [if it is a legal place] the prosecution must fail; whilst if it is in a place where it may not lawfully be had the onus apart from the section should be on the accused to exculpate himself. And when a case is made against an accused person under sec. 88, its weight, must of course, depend upon its circumstances."

A careful reading of these decisions and the section seems to warrant the conclusion that the Magistrate may in his discretion convict where proof of possession of the liquor in question has once been established. But there is nothing in the section to say that the magistrate must convict in such a case unless he is satisfied on the evidence that a conviction ought to be made. The opinion expressed in *R. v. Le Clair* does not seem to be wholly warranted by the wording of the section.

There is nothing in the section to prevent the magistrate from giving the accused the benefit of the doubt where he considers he is entitled to a doubt. *R. v. McKay*, 32 Can. Cr. Cas. 9, 46 O.L.R. 125.

The Magistrate may or may not convict under sec. 88 as he thinks proper and its application must depend upon the circumstances.

It is also a matter for the discretion of the Magistrate as to whether the evidence for the defence is sufficient proof that the accused did not commit the offence charged. *R. v. Leduc*, 30 Can. Cr. Cas. 246, 43 O.L.R. 290.

Section 88 is also considered in the following cases:—*R. v. Melvin* (1916), 34 D.L.R. 382, 27 Can. Cr. Cas. 350, 38 O.L.R. 231; *R. v. Rosarri*, 29 Can. Cr. Cas. 297; *R. v. Warne Drug Co.*, 37 D.L.R. 788, 29 Can. Cr. Cas. 384, 40 O.L.R. 469; *R. v. Tugman*, 40 O.L.R. 349; *R. v. Axler* (1917), 40 O.L.R. 304; *R. v. Kallas*, 31 Can. Cr. Cas. 57;

R. v. Nazzareno, 30 Can. Cr. Cas. 290, 44 O.L.R. 36; R. v. Punnett, 18 O.W.N. 229; R. v. Smith, 18 O.W.N. 220; R. v. Hagen, 53 D.L.R. 479, 33 Can. Cr. Cas. 208, 47 O.L.R. 384; R. v. Hogan, 47 O.L.R. 243; R. v. Collina, 55 D.L.R. 29, 34 Can. Cr. Cas. 109, 48 O.L.R. 199; R. v. Korluck, 19 O.W.N. 34; R. v. Fields, 58 D.L.R. 507, 36 Can. Cr. Cas. 214; R. v. Mooney, 58 D.L.R. 524, 36 Can. Cr. Cas. 165; R. v. Sakalov (1921), 36 Can. Cr. Cas. 346.

89. The fact of any person who is not the holder of a license under this Act keeping up any sign, writing, printing or other mark, in or near to his house or premises, or having such house fitted up with a bar or other place containing bottles or casks displayed so as to induce a reasonable belief that such house or premises is or are licensed for the sale of any liquor or that liquor is sold or served therein, or that there is on such premises more liquor than is reasonably required for the persons residing therein, shall be deemed *prima facie* evidence of the unlawful sale and keeping for sale and having and keeping of liquor by such person. 1916, c. 50, s. 89.

Signs and fittings *prima facie* evidence.

90. In any prosecution under this Act the production by the inspector or any officer of the Crown or by any other person concerned in such prosecution of a certificate signed or purporting to be signed by the Government analyst as to the analysis of any liquor and of an affidavit attesting the signature of such analyst, shall be conclusive evidence of the facts stated in such certificate. 1916, c. 50, s. 90.

Certificate of government analyst as evidence.

91.—(1) In any prosecution under this Act, if the inspector attends the court as prosecutor or witness and travels to attend such court a distance of more than three miles from his place of residence, the magistrate trying the case may tax against the defendant, in case of conviction, as costs in the cause to cover railway fare or hire of conveyance of the inspector in attending the said prosecution,

Inspector's expenses to be allowed for attending court.

(a) if the inspector travels by railway or stage the fares actually required to be paid by him;

Railway or stage fare.

- Hired conveyance. (b) if by a hired conveyance, the sums actually required to be paid for a horse, conveyance and tolls;
- His own conveyance. (c) if in his own conveyance, ten cents per mile;
- Other expenses. (d) to cover all other expenses \$3 per day; and
- Adjournments. (e) in cases of adjournment at the instance of the defendant, similar additional allowances, where the inspector is actually in attendance. 1916, c. 50, s. 91 (1); 1920, c. 78, s. 13.
- Verification. (2) The mileage or other expenses shall be verified by the affidavit of the inspector.
- Inspector to make quarterly returns. (3) The inspector shall make quarterly returns in detail under oath to the Board of all sums received by him for mileage, and other expenses, in this section provided for. 1916, c. 50, s. 91 (2), (3).

## APPEALS.

- Appeal to judge of county or district court. **92.**—(1) Any person convicted under this Act may, subject to the provisions hereinafter mentioned appeal from the conviction to the judge of the county or district court of the county or district in which the conviction or order is made, sitting in chambers without a jury, if a notice of such appeal is given to the prosecutor or complainant and to the convicting magistrate within ten days of such conviction.
- Notice to set forth grounds and give address for service. (a) Such notice shall set forth the grounds on which the appeal is made and shall have endorsed thereon the address at which the appellant may be served with any notice or process in connection with any proceeding under this section or under section 95 of this Act. 1922.
- Affidavit to be delivered with notice of appeal. (2) There shall be delivered to the convicting magistrate, with such notice of appeal, an affidavit of the person convicted complying with the require-

ments set out in section 94 hereof.

- (3) The term "judge" as used in this Act shall mean judge or acting judge of the county or district court of a county or district, and shall include a junior judge acting at the request or in the case of the illness or absence of the judge. "Judge" meaning of.
- (4) In case the appellant has paid the fine and costs imposed upon him by the convicting magistrate he may, subject to the conditions set out in subsections 1 and 2 hereof and the deposit of \$100 with the magistrate to answer the respondent's costs, appeal against such conviction to the judge having jurisdiction in the matter who shall hear and determine such appeal as provided in subsections 11 and 12 hereof. Where fine has been paid.
- (a) The deposit of \$100 referred to in this subsection shall be made at the time of the delivery of the notice of appeal or within five days thereafter or in default of such deposit his appeal shall be dismissed. 1922. Deposit to be made with notice of appeal.
- (5) Subject to the next following subsection, the person convicted, if he is in custody, shall either remain in custody until the hearing of such appeal before the judge, or he may, notwithstanding any order of imprisonment, either in the first instance or in default in the payment of a fine, enter into a recognizance with two sufficient sureties in such sum or sums as the magistrate with the approval of the crown attorney may fix, conditioned personally to appear before the judge and to try such appeal and abide by his judgment thereupon, and also to pay any penalty in money and costs which the judge may order. Recognizance.
- (6) Where the appellant desires to deposit a sum of money instead of providing sureties he may do so on entering into a recognizance on his own Money deposit in lieu of recognizance.

behalf and depositing an amount approved by the convicting magistrate and the crown attorney, not being less than a surety would be required to become responsible for and any money so deposited shall be available for the payment of any fine and costs which the judge may think fit to impose.

When security may be withdrawn or cancelled.

- (7) In any case in which security is provided, whether in money or otherwise, the same shall not be withdrawn until the time has elapsed for entering an appeal, and in case of a further appeal the security shall remain until the final disposition of the case.

Liberation of appellant on completing security.

- (8)—(a) Upon the recognizance being entered into or or deposit made, the magistrate shall liberate such person if in custody.

Transmission of papers to County Court Clerk.

- (b) The Magistrate shall immediately after such liberation, or if the appellant remains in custody, shall immediately after service of the notice of appeal upon the magistrate deliver or transmit by registered post to the clerk of the County or District Court to be delivered after filing to the judge appealed to, the depositions and all other papers in the case including the notice of appeal and affidavit of the appellant, with a certificate signed by the magistrate in the form hereinafter mentioned, and such certificate shall be deemed to be part of the record. 1921, c. 73, s. 6, amended. 1922.

Certificate of magistrate with return.

- (9) The said certificate shall be in the following form:

*Certificate of Magistrate.*

A notice having been served upon me, the undersigned, of the intention of the defendant to appeal against my decision in the case set out in the information mentioned below, I here-

with in pursuance of the Statute, return the following papers therein:

1. Notice of appeal and affidavit (if any).
2. Information.
3. Summons or warrant issued thereon.
4. The evidence.
5. The conviction or order (as the case may be).
6. Other papers (if any), naming them.

And I hereby certify to the judge of the county (or district) court of the county (or district) of \_\_\_\_\_ that I have above truly set forth all the papers and documents in my custody or power relating to the matter set forth in the said notice of appeal.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1921.

Police Magistrate.

(or) Justice of the Peace.

In and for the (as the case may be).

- (10) The appellant shall pay to the clerk of the county or district court for his attendance and services in connection with such appeal the sum of \$2 and the same shall be taxed as costs in the cause. Fee of clerk of court.
- (11) Within fifteen days from the service of the notice of appeal the judge shall grant a summons calling upon all parties to attend before him at his chambers on the day and hour named therein when the hearing of the appeal will be proceeded with. Summons to be issued by judge.
- (12) The appeal shall be heard and determined upon the evidence and proceedings had and taken before the magistrate to be called the record, and Appeal to be on evidence before magistrate.

the judge may, upon such hearing, make such order as he may think fit affirming, reversing or amending the order appealed from, and may impose fine and costs or other penalty as is provided by this Act, and the order so made shall have the same effect and be enforced in the same way as if made by the magistrate whose order is appealed from.

(a) The term "order" as used in this subsection shall be deemed to include a conviction and also any order made under section 70 of this Act.

Stay of 15  
days.

(b) The order of the judge shall not take effect until fifteen days from the date thereof, provided, however, that if the release of a person from custody has been ordered, the judge may, with the approval of the Crown Attorney, grant bail to the prisoner in such sum and with such surety or sureties as the judge, with the approval of the Crown Attorney, may deem sufficient, and may take the recognizance of the accused accordingly, conditioned to await and abide by the decision of the Appellate Division, to which an appeal may be taken as provided by section 95 of this Act. (new). 1922.

Bail.

Application  
of Rev. Stat.,  
c. 90.

(13) The practice and procedure upon such appeals and all proceedings thereon, shall, except as hereinbefore provided, be governed by *The Ontario Summary Convictions Act* so far as the same is not inconsistent with this Act. 1921, c. 73, s. 6 *Part*.

Section 92 of the original Act, 1916 (Ont.), ch. 50, was struck out in 1921, (Ont.), ch. 73, and a new section substituted providing for appeals in all cases to the County Judge.

Sub-section 12 of this section purports to confer very



broad powers on the Judge hearing the appeal, but these powers appear to be very much limited by sec. 102 of the Act, which provides as follows:—"Upon any application to quash or set aside any such conviction or order . . . . . whether in appeal or upon habeas corpus, or by way of certiorari, or otherwise, the Court or Judge to which or to whom such appeal is made . . . . . shall dispose of such appeal or application upon the merits notwithstanding any such variance, excess of jurisdiction or defect as aforesaid; and in all cases where it appears that the merits have been tried . . . . . and there is evidence to support the same, such conviction, warrant, process, or proceeding shall be affirmed . . . . ."

It has been decided in *R. v. Denny*, 61 D.L.R. 663, 36 Can. Cr. Cas. 77, that since the amendment to sec. 92 in 1921 providing for appeal that certiorari will not lie. If the portions of sec. 102 referring to appeals is not to be taken to refer to appeals under sec. 92, the whole section would now be obsolete and meaningless.

In *R. v. McCranor*, 47 D.L.R. 237, 31 Can. Cr. Cas. 130, 44 O.L.R. 482, it is laid down by Riddell, J., that a County Judge hearing an appeal on the record under sec. 92 as it was previous to the amendment ought not to reverse the decision of the Magistrate if he found that there was sufficient evidence upon which to base the decision.

The Judge hearing the appeal on the record under the amended section appears to be in no better position than the county Judge was in *R. v. McCranor* and it therefore appears that he must still be bound by sec. 102.

Even where the convicting magistrate had no jurisdiction to try the case there is no right to certiorari. *Rex v. Durno* 21 O.W.N. 225.

**93.**—Any informant or complainant dissatisfied with an order of dismissal made by a magistrate under this Act may, with the consent of the Attorney-General, procured within fifteen days of the date of the order of dismissal, appeal to

Appeal from  
order of  
dismissal.

the judge of the county or district court in the county or district in which the order complained of was made, and the proceedings shall be the same as nearly as may be as in the case of an appeal by a person convicted under this Act, and the judge shall have and may exercise the same powers as in the case of an appeal against a conviction and may make such order as he may think fit and the deposit of security in such case shall be dispensed with. 1921, c. 73, s. 6 *Part*.

Affidavit of  
bona fides.

**94.**—No appeal shall lie from a conviction for any violation or contravention of any of the provisions of this Act unless the party appealing shall, with his notice of appeal, deliver to the magistrate who tried the case, an affidavit that he did not by himself or by his agent, servant or employee or any other person with his knowledge or consent commit the offence charged in the information, and such affidavit shall negative the charge in the terms used in the conviction, and shall further negative the commission of the offence by the agent, servant or employee of the accused or any other person with his knowledge or consent, which affidavit shall be transmitted with the conviction and other papers to the judge to whom the appeal is made, provided that where the appeal is only as against the penalty imposed by the magistrate the affidavit required by this action shall not be necessary. 1921, c. 73, s. 6 *Part*.

(a) If the party appealing be a corporation the affidavit referred to in this section may be made by the President, Secretary or any other officer or employee of the corporation, having knowledge of the facts. 1921, c. 73, s. 94, amended 1922.

Appeal to  
divisional  
court.

**95.**—(1) At any time within fifteen days from the date of the judgment or order of any judge of a county or district court arising out of, or under this Act, the Attorney-General may direct an appeal to a divisional court of the Appellate Division of the Supreme Court of Ontario upon any question touching the validity or invalidity of any Act of this Legislature or of any part thereof, or from the judgment or order of a judge of the county or district court in any other case arising out of or under this Act in which the Attorney-General

of Ontario certifies that he is of opinion that the matters in dispute are of sufficient importance to justify an appeal.

The general right of appeal under the Habeas Corpus Act, R.S.O. 1914, ch. 84, sec. 8, is curtailed by this section. *R. v. Martin*, 39 D.L.R. 635, 29 Can. Cr. Cas. 189, 41 O.L.R. 79.

(2) Such appeal shall be had upon notice thereof to be given to the opposite party of the intention to appeal setting forth the grounds of such appeal. Notice of appeal.

(a) Service of the Notice of Appeal upon the solicitor for the opposite party or upon a grown up person at the last known place of residence or business of the opposite party, or the sending of such notice by registered mail, to the last known address of such party shall be deemed good and sufficient service. 1922.

(3) The clerk of the county or district court shall certify the judgment, conviction, orders and all other proceedings to the proper officer of the Supreme Court at Toronto for use upon the appeal. Certifying proceedings to court.

(4) The Divisional Court shall thereupon hear and determine the appeal and shall make such order for carrying into effect the judgment of the court as the court shall think fit. 1921, c. 73, s. 6 *Part*. Hearing and determination of appeal.

#### CASES OF SEVERAL CONVICTIONS.

96. The proceedings upon any information for an offence against any of the provisions of this Act in a case where a previous conviction or convictions are charged, shall be as follows:— Procedure where previous convictions charged.

(a) The magistrate, justice or justices of the peace shall in the first instance inquire concerning such subsequent offence only, and if the accused be found guilty thereof he shall then be asked

whether he was so previously convicted as alleged in the information and, if he answers that he was so previously convicted, he shall be sentenced accordingly; but, if he denies that he was so previously convicted or does not answer such question, the judge, magistrate or justice shall then inquire concerning such previous conviction or convictions.

(b) Such previous convictions may be proved *prima facie* by the production of a certificate purporting to be under the hand of the convicting magistrate, justice or justices of the peace, or clerk of the peace to whose office the conviction has been returned, without proof of signature or official character.

(c) In the event of any conviction for any second or subsequent offence becoming void or defective after the making thereof by reason of any previous conviction being set aside, quashed or otherwise rendered void, the magistrate, justice or justices of the peace by whom such second or subsequent conviction was made shall summon the person convicted to appear at a time and place to be named therein and shall thereupon, upon proof of the due service of such summons if such person fails to appear, or on his appearance, amend such second or subsequent conviction and adjudge such penalty or punishment as might have been adjudged had such previous conviction never existed; and such amended conviction shall thereupon be held valid to all intents and purposes as if it had been made in the first instance. 1916, c. 50, s. 96, cls. (a.—c.).

(d) In case any person, who has been convicted of a contravention of any provision of any of the sections of this Act mentioned in section 58 hereof, is afterwards convicted of an offence against any

provision of any of the said sections, such conviction shall be deemed a conviction for a second offence within the meaning of the said section and shall be dealt with and punished accordingly, although the two convictions may have been under different sections, and where the first offence was a contravention of one of the sections mentioned in section 59 hereof, a conviction for a subsequent offence against the same or any section mentioned in said section 59 shall be deemed a conviction for a second offence within the meaning of said section 59, and shall be prosecuted accordingly. 1916, c. 50, s. 96 cl. d; 1917, c. 50, s. 32.

Second offences, when to be charged.

The provisions of sec. 96 are directory and not imperative and a conviction will not be set aside by reason of the fact that the magistrate failed to follow the procedure laid down in this section. *R. v. Mercier*, 31 Can. Cr. Cas. 171, 45 O.L.R. 237; *R. v. Coote*, 22 O.L.R. 269; *R. v. Hanley*, 30 Can. Cr. Cas. 63, 41 O.L.R. 177; *R. v. Berlin Lion Brewery Ltd.*, 21 Can. Cr. Cas. 155, 45 O.L.R. 340. (Over ruled in part by *R. v. Mercier*); *R. v. McDevitt*, 28 Can. Cr. Cas. 352, 39 O.L.R. 138.

The provision of sub-sec. (b) merely states a method by which a previous conviction may be proved—a permissive method, not an imperative method. *R. v. Helpert*, 35 Can. Cr. Cas. 25, 48 O.L.R. 627.

The form of information and form of conviction for a second or subsequent offence both contemplate that both the information and conviction shall set out explicitly the date, the place where, and the names of the Magistrates, or Justices of the Peace before whom the accused was previously convicted, and also the date when and the place where the previous offence was committed and the specific nature of the previous offence. It is not fatal if these be omitted but extremely unsafe and unwise. *R. v. Johnston*, 58 D.L.R. 452, 36 Can. Cr. Cas. 295, 49 O.L.R. 74.

Before an accused can be convicted of a subsequent offence the previous conviction must be charged in the subsequent information. *R. v. Berlin Lion Brewery, Ltd.*, 31 Can. Cr. Cas. 155, 45 O.L.R. 340. See also *R. v. Robins* (1920), 35 Can. Cr. Cas. 1, 48 O.L.R. 527; *R. v. Sequin* (1921), 59 D.L.R. 534, 34 Can. Cr. Cas. 374, 49 O.L.R. 28; *R. v. Merritt* (1921), 36 Can. Cr. Cas. 137.

Duty of inspector as to second offences.

**97.**—(1) Whenever a prosecution is brought against any person under this Act for an offence of which he has been previously convicted and for which a different or greater penalty is imposed in the case of a second or any subsequent offence, the inspector, policeman, constable or other officer shall prosecute as for a second or subsequent offence according to the fact. 1916, c. 50, s. 97 (1); 1920, c. 78, s. 14 *Part*.

Penalty.

(2) Any inspector or other person mentioned in the preceding subsection who knowingly or wilfully contravenes the provisions of this section shall incur a penalty of not less than \$20 nor more than \$50. 1916, c. 50, s. 97 (2); 1920, c. 78, s. 14 *Part*.

A conviction for a third offence means a conviction for an offence charged as a third offence. *R. v. Berlin Lion Brewery Ltd.*, 31 Can. Cr. Cas. 155, 45 O.L.R. 340.

One conviction for several offences.

**98.** One conviction for several offences, in which a separate penalty is provided for each, may be made under this Act where the offences may have been committed on the same day; but the increased penalty or punishment hereinbefore imposed shall only be incurred or awarded in the case of offences committed on different days and after conviction had for the first offence. 1916, c. 50, s. 98.

A conviction for more than one offence committed on the same day was made in *R. v. Hagen*, 53 D.L.R. 479, 33 Can. Cr. Cas. 208, 47 O.L.R. 384.

Effect of second conviction.

**99.** When not otherwise provided, a second conviction of a licensed person under this Act, for any violation or contravention of any of the provisions of this Act, shall *ipso facto*

operate as a forfeiture of his license and disqualify the person convicted from obtaining a license for three years thereafter. 1916, c. 50, s. 99.

#### COSTS.

100. In every case where a penalty is authorized by this Act to be inflicted, the magistrate, justice or justices of the peace shall have the power to order costs to be paid in addition to the amount of the penalty, and such costs when so ordered shall be considered part of the penalty. 1916, c. 50, s. 100.

Power to make order as to costs.

#### CONVICTIONS AND SUBSEQUENT PROCEEDINGS.

101. No conviction or warrant for enforcing the same or any other process or proceeding under this Act shall be held insufficient or invalid by reason of any variance between the information and the conviction or by reason of the punishment imposed or the conviction or order made being in excess of that which might lawfully have been imposed or made, or by reason of any other defect in form or substance, provided it can be understood from such conviction, warrant, process or proceeding, that the same was made for an offence against some provision of this Act within the jurisdiction of the magistrate, justice or justices of the peace or other officer who made or signed the same, and provided there be evidence to prove some offence under this Act, and where necessary, every such conviction, warrant or other process or proceeding, may be amended in such manner as justice may require. 1916, c. 50, s. 101.

Variations between information and conviction, etc.

If a conviction is bad on its face and the Crown seeks to amend it so as to make it good, the amendment should be made only if there is evidence in the opinion of the Appellate Court to support the same. *R. v. Newton*, 26 Can. Cr. Cas. 80, 48 O.L.R. 403.

The following decisions affecting sec. 101 having been made prior to the amendment of sec. 92 are cited for reference only:—*R. v. Robins*, 35 Can. Cr. Cas. 1, 48 O.L.R.

527; *R. v. Fields*, 58 D.L.R. 507; *R. v. Martin*, 39 D.L.R. 635, 29 Can. Cr. Cas. 189, 41 O.L.R. 79; *R. v. Leduc*, 30 Can. Cr. Cas. 246, 43 O.L.R. 290; *R. v. Kaplan*, 52 D.L.R. 596, 36 Can. Cr. Cas. 24, 47 O.L.R. 110; *R. v. Johnston*, 58 D.L.R. 452, 36 Can. Cr. Cas. 295, 49 O.L.R. 74.

Informalities not to invalidate conviction.

102.—(1) Upon any application to quash or set aside any such conviction or order, or the warrant for enforcing the same, or other process or proceeding, whether in appeal or upon *habeas corpus*, or by way of *certiorari* or otherwise, the court or judge to which or to whom such appeal is made, or to which or to whom such application has been made upon *habeas corpus* or by way of *certiorari* or otherwise, shall dispose of such appeal or application upon the merits, notwithstanding any such variance, excess of jurisdiction or defect as aforesaid; and in all cases where it appears that the merits have been tried, and that the conviction, warrant, process or proceeding is sufficient and valid under this section or otherwise, and there is evidence to support the same, such conviction, warrant, process or proceeding shall be affirmed, or shall not be quashed (as the case may be); and such court or judge may in any case amend the same if necessary; and any conviction, warrant, process, or proceeding so affirmed, or affirmed and amended, shall be enforced in the same manner as convictions affirmed on appeal, and the costs thereof shall be recoverable as if originally awarded. 1916, c. 50, s. 102.

Notice of motion to quash conviction.

(2) No motion to quash a conviction or order made under this Act shall be heard by the court or judge to which such application is made, unless notice of such motion has been served within thirty days from the date of the conviction or order. 1917, c. 50, s. 33.

Since the amendment of 1921 providing for appeal in all cases to the County Judge, *certiorari* will not lie. *Rex v. Denny*, 61 D.L.R. 663, 36 Can. Cr. Cas. 77.

The following cases affecting sec. 102 are cited for reference only:—*R. v. Martin*, 39 D.L.R. 635, 29 Can. Cr. Cas.



189, 41 O.L.R. 79; *R. v. McKay*, 32 Can. Cr. Cas. 9, 46 O.L.R. 126; *R. v. Johnston*, 58 D.L.R. 452, 49 O.L.R. 74; *R. v. Kaplan*, 52 D.L.R. 596, 36 Can. Cr. Cas. 24, 47 O.L.R. 110; *R. v. Robins*, 35 Can. Cr. Cas. 1, 48 O.L.R. 527; *R. v. Leduc*, 30 Can. Cr. Cas. 246, 43 O.L.R. 290; *R. v. Faulkner*, 57 D.L.R. 549, 34 Can. Cr. Cas. 224, 48 O.L.R. 500.

**102a.** If it appears to the court or judge that the magistrate before whom any complaint or other proceeding under this Act was heard or taken refused to receive evidence which might have been material, the court or judge may remit the same to the magistrate, with directions to rehear the case, and with such other directions as the court or judge may think proper, and the magistrate shall rehear the complaint accordingly, but no conviction shall be quashed or set aside on the ground that some evidence was improperly admitted or rejected, or some irregularity occurred at the hearing, unless, in the opinion of the court or judge, some substantial wrong was thereby occasioned. 1918, c. 40, s. 19.

Remitting case for rehearing on ground of exclusion of evidence.

*R. v. De Angelis*, 24 Can. Cr. Cas. 48 O.L.R. 160; *R. v. Korluck*, 19 O.W.N. 34; *R. v. Martel*, 35 Can. Cr. Cas. 105, 48 O.L.R. 347; *R. v. McDonald*, 36 Can. Cr. Cas. 259; *R. v. Newton*, 36 Can. Cr. Cas. 80, 48 O.L.R. 403; *R. v. Sakalov*, 36 Can. Cr. Cas. 346.

**103.** Whenever a licensee is convicted of any offence against the provisions of this Act a record thereof shall be indorsed on the license of the person convicted, and the following provisions shall immediately have effect, that is to say:—

Record of conviction on license.

- (a) the magistrate, justice or justices before whom any licensed person is accused shall require such person to produce and deliver to him the license under which such person carries on business, and the summons shall state that such production will be required. 1916, c. 50, s. 103.

**104.** Where the conviction of any licensee has the effect of causing the forfeiture of the license or of disqualifying any person for the purposes of this Act, the license shall be

Production of license for cancellation.

produced to the magistrate hearing the case, for the purpose of cancellation. 1916, c. 50, s. 104.

Certificate  
of conviction.

105. The magistrate, justice or justices of the peace, on any conviction of any person for an offence against this Act, shall send forthwith to the Board a certificate of such conviction, for which certificate he shall be allowed a fee of fifty cents, to be taxed as costs in the cause, and in case of liquor being forfeited under section 70 or otherwise, a report of the same shall immediately be sent to the Board, with full particulars by the magistrate or justice of the peace ordering such forfeiture. 1916, c. 50, s. 105; 1918, c. 40, s. 20.

Report on  
liquor  
forfeited.

Application  
of Act to  
corporations.

106. Every corporation incorporated by or under an Act of this Legislature, and every corporation incorporated otherwise than by or under an Act of this Legislature, which transacts any business within the Province, shall be deemed to be and shall be in all respects subject to the provisions of this Act, and every such corporation shall, as to any Act, matter or thing done in Ontario, in, about, concerning and touching or relating to liquor, be deemed to be and shall be within the jurisdiction of the courts of this Province and of every judge, magistrate, justice or justices of the peace, within the Province. 1916, c. 50, s. 106.

Service on  
corporations.

107. In all prosecutions, actions or proceedings under the provisions of this Act against a corporation, every summons, warrant, order, writ or other proceeding may, in addition to any other manner of service which may be provided or authorized by law, be served on such corporation by delivering the same to any officer, attorney or agent of the said corporation, or by leaving it at any place where it carries on any business provided that service in any other way shall be deemed sufficient if the court, judge, magistrate, justice or justices of the peace by or before whom such summons, warrant, order, writ or other proceeding was issued or is returnable, or by or before whom any proceeding subsequent to such service is to be had or taken, shall be of the opinion that the service has been such as to bring the summons, warrant, order, writ or other proceeding to the notice of such corporation. 1916, c. 50, s. 107.

108.—(1) Whenever any corporation is convicted of any offence against or under this Act, and the conviction adjudges a pecuniary penalty or compensation to be paid by such corporation, or an order under this Act requires the payment of a sum of money by a corporation, the court, judge, magistrate, justice or justices of the peace, by his or their conviction or order, after adjudging payment of such penalty, compensation or sum of money with costs, may order and adjudge that, in default of payment of such penalty, compensation or sum of money forthwith or within a limited time, such penalty, compensation or sum of money shall be levied by distress and sale of the goods and chattels of such corporation.

Recovery of penalties from corporation by distress.

(2) In any such case, and in addition to the other remedies provided hereby, a copy of such conviction or order certified to by any judge, magistrate, justice or justices of the peace, or by the officer in whose custody the same is by law required to be kept, may be filed in the proper county or district court, and such conviction or order shall thereupon become a judgment of said court and all proceedings may be thereupon taken and had as on any other judgment of said court.

Enforcing judgment against corporation.

(3) In the case of the conviction of or an order against a corporation, which by the law of Ontario is required to obtain a license to carry on its business in Ontario and has obtained such license, if the penalty, compensation or sum of money be not paid according to the terms of the conviction or order, the Lieutenant-Governor in Council may, in case of such default in payment of penalty, compensation or sum of money as aforesaid, cancel and revoke the license so issued to such corporation.

Cancellation of license of corporation.

(4) Provided always that nothing in this section contained shall be construed as in any way affecting, limiting or restricting any proceedings which otherwise can or may be taken or had for the infliction of punishment by penalty or imprisonment or the modes of enforcement or recovery of fines or penalties. 1916, c. 50, s. 108.

Proviso.

Power to issue distress on non-payment of penalty.

109. Notwithstanding anything in this Act where a pecuniary penalty is imposed, the magistrate may in his discretion order that in default of payment of the penalty distress shall issue for the recovery thereof, or he may, if he sees fit, order that in default of immediate payment of the penalty the offender shall be committed to gaol for such period as may be allowed by law. 1916, c. 50, s. 109.

Payment over and application of penalties.

110.—(1) The penalties in money imposed under this Act or any portion of them that may be recovered except as provided in the next subsection shall be paid to the convicting Magistrate in the case, and shall by him or them be paid to the Inspector of the county or district in which the offence was committed, to be by him remitted to the License Branch in accordance with the regulations of the Department and shall form part of the consolidated revenue of the Province. 1916, c. 50, s. 110 (1).

(2) Where an officer appointed under section 120 is the prosecutor or complainant, then the same shall be paid to the treasurer of the local municipality wherein the offence was committed. 1916, c. 50, s. 110 (2); 1917, c. 50, s. 34.

When costs cannot be recovered.

111.—(1) Where an Inspector or any officer appointed by the Crown has prosecuted and obtained a conviction and has been unable to recover the amount of costs, the same shall be made good out of the appropriation of the Legislature for the enforcement of the "Ontario Temperance Act."

Indemnification of officers against costs.

(2) Where an Inspector or officer appointed by the Crown has prosecuted and failed to obtain a conviction he shall be indemnified against all costs out of the appropriation of the Legislature for the enforcement of the "Ontario Temperance Act."

Forms for use on prosecutions.

(3) The forms in Schedule "F" or any forms to the like effect shall be sufficient in the cases thereby respectively provided for, and where no forms are prescribed, new ones may be framed to meet the circumstances of the case, conforming as nearly as may be to those employed in proceedings under *The Ontario Summary Convictions Act*, such forms being

Rev. Stat., c. 90.

made short and concise in the mode indicated by the forms in Schedule "F." 1916, c. 50, s. 111.

WITNESSES.

112. In any prosecution under this Act, the magistrate trying the case may summon any person represented to him as a material witness in relation thereto; and if such person refuses or neglects to attend pursuant to such summons, the magistrate may issue his warrant for the arrest of such person; and he shall thereupon be brought before the magistrate, and if he refuses to be sworn or to affirm, or to answer any question touching the case, he may be committed to the common gaol of the county, there to remain until he consents to be sworn or to affirm and to answer. 1916, c. 50, s. 112.

Witnesses summoned and not appearing may be brought up by warrant.

113.—(1) Any person summoned as a party to, or as a witness in any proceeding under this Act, may, by the summons, be required to produce, at the time and place appointed for his attendance, all books and papers, accounts, deeds and other documents in his possession, custody or control, relating to any matter connected with the said proceeding, saving all just exceptions to such production; and shall incur the same penalties for non-production of such books, papers or documents, as he would incur by refusal or neglect to attend, pursuant to such summons, or to be sworn or to answer any questions touching the case.

Production of books, etc., may be ordered.

(2) Any person who, having contravened any of the provisions of this Act, compromises, compounds or settles, or offers or attempts to compromise, compound, or settle the offence with any person or persons, with the view of preventing any complaint being made in respect thereof, or if a complaint has been made with the view of getting rid of such complaint, or of stopping or having the same dismissed for want of prosecution or otherwise, shall be guilty of an offence under this Act, and on conviction thereof shall be imprisoned at hard labour in the common gaol of the county in which the offence was committed for the period of three months.

Penalty in case any person compromises, compounds, or settles a case.

Penalties for being concerned in any such compromise, etc.

(3) Every person who is concerned in, or is a party to, the compromise, composition or settlement mentioned in subsection 1 shall be guilty of an offence, and on conviction thereof shall be imprisoned in the common gaol of the county in which the offence was committed for the period of three months.

Penalty for tampering with a witness.

(4) Any person who, on any prosecution under this Act, tampers with a witness, either before or after he is summoned or appears as such witness on any trial or proceeding, under this Act, or by the offer of money, or by threats, or in any other way, either directly or indirectly, induces or attempts to induce any such person to absent himself, or to swear falsely, shall incur a penalty of \$50 for each offence. 1916, c. 50, s. 114.

#### REMISSION OF PENALTIES.

No remission by magistrates, etc.

114. No magistrate, justice of the peace or municipal council shall have any power or authority to remit, suspend or compromise any penalty or punishment inflicted under this Act. 1916, c. 50, s. 114.

Register of licenses.

115. Every inspector shall keep

(a) a register to be called "The register of licenses," containing the particulars of all licenses granted in his district, the premises in respect to which they are granted, the names of the licensees and the names of the sureties to any bond given by any such licensee in pursuance of the provisions of this Act; and he shall also enter on the register all forfeitures of licenses, disqualifications of licenses, records of convictions and other matters relating to the licenses then on the register; and

Record of applications.

(b) a record of all applications made under this Act showing the names of the applicants, the nature of the applications, the premises in respect of which the applications are made, the dates on

which the applications were heard and the manner in which the same were disposed of, including in case of refusal the cause or causes thereof. 1916, c. 50, s. 115.

R. v. Boileau, 36 D.L.R. 781.

116. The local inspector shall, immediately on the termination of every case, and also on the thirty-first day of January, thirtieth day of April, thirty-first day of July and the thirty-first day of October in each year, report to the Board all prosecutions and convictions under this Act in their respective districts, whether instituted or obtained by them or by others to their knowledge, giving dates, names of parties, amounts of fines and names of magistrates before whom respectively the cases were tried. 1918, c. 40, s. 21.

Report on prosecutions and convictions.

117. Repealed 1922.

PROVINCIAL BOARD OF LICENSE COMMISSIONERS.

118.—(1) There shall be a Board of License Commissioners for Ontario, which shall be composed of not more than three persons, to be appointed by the Lieutenant-Governor in Council, and one of whom shall be appointed as Chairman of the Board. 1916, c. 50, s. 118; 1918, c. 40, s. 22.

Provincial Board of License Commissioners.

(2) The members of the Board shall hold office during pleasure.

Tenure of office.

(3) Two of the members of the Board shall constitute a quorum and the act or decision of any two members present and acting together shall be binding and sufficient.

Quorum.

(4) Each of the members of the Board before entering upon the duties of his office shall take and subscribe before the Minister or before some person appointed by him for that purpose the following oath,—

Oath of office.

I, *A. B.*, having been appointed a member of the Board of License Commissioners for Ontario, do swear,

That I will well and faithfully discharge the duties of that office as prescribed by law, without fear or favour, prejudice or partiality, so help me God.

(Signed) *A. B.*

Jurisdiction,  
powers  
and duties.

Powers of  
Board as  
to recon-  
sideration.

(5) The Board shall have jurisdiction throughout the Province, and, subject to the provisions of this Act, the Board may reconsider any matter which has been dealt with by it, and may rescind, alter or amend any decision, order or resolution previously made or passed by said Board. 1916, c. 50, s. 118 (2-5).

Proof of  
orders, etc.,  
of board.

(6) Any resolution, regulation or order of the Board may be proved by a certificate of the secretary of the Board or by any member thereof, and such certificate purporting to be so signed shall be received as *prima facie* evidence in any court of the facts therein set out, without any proof of the signature or official position of the person signing the same.

Power to  
take evi-  
dence on  
oath.

(7) In every case in which the Board is authorized to determine any matter it may take evidence under oath, which any member of the Board is empowered to administer. 1917, c. 50, s. 35.

Enquiry—  
powers of  
Chairman of  
Board, and  
Commis-  
sioner of  
Police.

(8) The Chairman of the Board of License Commissioners for Ontario and the Commissioner of Police for Ontario may, acting together or separately, hold an enquiry into the conduct of any license inspector, constable, provincial officer, special officer or employee engaged in the enforcement of *The Ontario Temperance Act* and for the purposes of such enquiry shall have and may exercise the like powers and authority as may be conferred upon a Commissioner or Commissioners under *The Public Inquiries Act*. 1922.

#### INSPECTORS AND OFFICERS OF BOARD.

Appoint-  
ments.

119.—(1) The Lieutenant-Governor in Council may appoint—



(a) Such provincial, district, county and city inspectors and provincial officers, as may be deemed necessary, but not more than one Inspector shall be appointed for any county exclusive of any city therein; Inspectors.

(b) Such other officers, clerks and servants of the Board as may be deemed necessary. 1916, c. 50, s. 119 (1). Office staff.

(2) Every such inspector and provincial officer shall, for the purposes of this Act, be *ex officio* a constable for every county and district in Ontario, but he shall not receive to his own use, any costs beyond his actual disbursements in respect of any service performed by him as such constable, and every such inspector and provincial officer shall, before entering upon the duties of his office, take and subscribe the following oath: Inspectors to be ex-officio constables.

I, *A.B.*, having been appointed a license inspector or a provincial officer (*as the case may be*) under *The Ontario Temperance Act*, do swear,

That I will well and faithfully discharge the duties of that office and the office of constable, which I hold *ex officio*, as prescribed by law, without fear or favour, prejudice or partiality, so help me God.

(Signed) *A.B.*

Sworn before me.....in the County of.....  
this.....day of.....19 .

This oath may be taken before any one authorized to take affidavits and must be filed with the Board at Toronto. 1916, c. 50, s. 119 (2); 1917, c. 50, s. 36.

(3) Every person appointed under this section shall furnish such security as the Treasurer of Ontario may require for the payment over of all sums of money received by him according to the provisions of this Act. 1916, c. 50, s. 119 (3). Security by officers.

(NOTE.—*The following section was enacted by The Ontario Temperance Amendment Act, 1920.*)

Adminis-  
tration of  
oaths to  
persons  
required to  
make  
returns.

**\*\*119a.**—In order to facilitate the making of the returns to the Board every person appointed under clause (a) of subsection 1, of section 119 of *The Ontario Temperance Act*, shall have power to administer an oath certifying the correctness of any return made under the said Act to any person required to make the same or to any person desiring to make an affidavit under section 35 of the said Act, and each member of the Board shall have similar power, but no fee shall be charged therefor. 1920, c. 78, s. 15.

(NOTE.—*Numbered 119a for convenience only. The section should be referred to as section 15 of The Ontario Temperance Amendment Act, 1920.*)

Appoint-  
ment of  
officers by  
councils to  
enforce  
provisions  
of this Act.

**120.** The Council of any municipality may by by-law appoint an officer whose duty it shall be to enforce the provisions of this Act within the municipality, and such council may by by-law provide for the payment of such officer or officers and for payment of any expenses incurred in such enforcement out of the general funds of the municipality, and every officer so appointed shall have within the municipality for which he is appointed all the powers possessed by a Provincial officer appointed under section 119, and all the provisions of this Act applicable to any such Provincial officer shall apply as to any officer appointed under this section and acting within the municipality for which he is appointed, in the same manner and to the same extent as if such municipal officer were expressly mentioned in such provisions; but nothing in this section contained shall be construed to authorize the payment to such officer of any part of the fines recovered under this Act. 1916, c. 50, s. 120; 1917, c. 50, s. 37. (Vide sec. 110).

Officers  
appointed  
by councils.

By-laws in-  
consistent  
with the  
Act.

**120a.** Where a by-law passed before the passing of this Act by any municipal council or board of police commissioners in any city is inconsistent with this Act, the provisions of this Act shall be given effect to unless herein otherwise expressed. 1917, c. 50, s. 38.

## PURCHASE OF ALCOHOL BY MANUFACTURERS.

121.—(1) Nothing in this Act shall prevent the purchase by manufacturers of vinegar, perfumes, pharmaceutical preparations, patent or proprietary medicines, essences and other products of recognized value, of alcohol or other liquor required and used in the manufacture of such products from such persons as are entitled to sell the same; provided, however, that any such manufacturer shall before purchasing alcohol or other liquor as aforesaid for any such purpose, obtain from the Board of License Commissioners a permit which such Board may issue authorizing such manufacturer to purchase such alcohol or other liquor during a specified period for the purpose and not exceeding the quantities mentioned in such permit, but no such alcohol or other liquor nor any part thereof so purchased shall be used for beverage purposes. 1916, c. 50, s. 121 (1); 1917, c. 50, s. 39 (1).

Purchase of alcohol for certain purposes may be authorized.

(2) Before any such permit is issued satisfactory evidence shall be furnished to the Board as to the character of the articles or commodities proposed to be manufactured in which alcohol or other liquor is or are required and such other evidence as in the public interest the Board may deem desirable, and such permit may on notice to the holder thereof and after due investigation be cancelled for cause in the discretion of the Board. 1916, c. 50, s. 121 (2); 1917, c. 50, s. 39 (2).

Evidence upon which permit may be issued.

(3) Any distiller or vendor in Ontario may, notwithstanding anything in this Act contained, sell and supply to any such manufacturer such alcohol or other liquor as he may require in the conduct of his business as aforesaid not being inconsistent with the terms of the permit issued to him as provided by subsection 1 of this section, a copy of which shall be filed with such distiller or vendor as the case may be. 1916, c. 50, s. 121 (3); 1917, c. 50, s. 39 (2).

Sale to person having permit authorized.

(4) Every such manufacturer shall not later than the tenth day of the months of January, April, July and October furnish to the Board a sworn statement showing the quantity of alcohol or other liquor purchased by such manufacturer

Quarterly statement by purchaser.

during the three months immediately preceding and the persons, firms and companies from whom the same was purchased and the dates on which such purchases were made, in case no such purchase is made during the period herein mentioned such manufacturer shall make and file with the Board a sworn statement to that effect. 1916, c. 50, s. 121 (4); 1917, c. 50, s. 39 (2); 1919, c. 60, s. 20.

**Offences.**

(5) Any person violating any provision of this section shall be guilty of an offence against this Act and shall be liable to the penalties provided by section 59 hereof. 1916, c. 50, s. 121 (5).

**Presumption of guilt from possession of unauthorized quantity.**

122. If upon the premises of any manufacturer mentioned or included in section 121 of this Act any liquor is found exceeding in quantity one gallon, unless it is shewn that the same has been purchased in pursuance of a permit issued under subsection 1 of the next preceding section such liquor shall be conclusively deemed to be kept for sale in contravention of section 40 of this Act and the same may be forthwith seized and removed together with the vessel or package in which the same is contained. 1916, c. 50, s. 122; 1917, c. 50, s. 40; 1918, c. 40, s. 22.

**SALE OF LIQUOR BY DRUGGISTS, AND SALE OF PATENT AND OTHER MEDICINES, AND OF ALCOHOL FOR THE PURPOSES OF THE ARTS AND MANUFACTURES.**

**Interpretation.**

123. In this and the following eleven sections of this Act,

**"Alcohol."**

(a) "Alcohol" shall mean alcohol as defined by the British pharmacopœia unless otherwise qualified or expressed;

**"Manufacturer."**

(b) "Manufacturer" shall mean a manufacturer for sale by wholesale;

**"Original and unbroken package."**

(c) "Original and Unbroken Package" shall mean the package in which the patent or proprietary medicine is put up by the manufacturer;

- (d) "Wholesale Druggist" shall mean a person, firm or company engaged in supplying druggists with drugs, patent or proprietary medicines, compounds, preparations or other articles and commodities usually kept and dealt in by druggists; "Wholesale druggist."
- (e) "Druggist" shall have the meaning assigned to it in section 2 (n) of this Act. 1916, c. 50, s. 123; 1917, c. 50, s. 41. "Druggist."

124. Except as otherwise expressly provided nothing in his Act shall prevent the sale by a druggist or a merchant, or company dealing in patent or proprietary medicines, of any such medicine in the original and unbroken package, if such medicine contains sufficient medication to prevent the same being used as an alcoholic beverage. 1916, c. 50, s. 124; 1918, c. 40, s. 24. Patent or proprietary medicines.

The Dominion Proprietary or Patent Medicine Act 1908 (Can.), ch. 56, and the Ontario Temperance Act do not enter upon the same field of legislation. The Proprietary or Patent Medicine Act is to prescribe with respect to the sale of patent medicines certain conditions and limitations for the protection of the public and it does not purport to confer upon the licensee any special authority to carry on or trade throughout Canada. *R. v. Warne Drug Co.*, 37 D.L.R. 788, 29 Can. Cr. Cas. 384, 40 O.L.R. 469.

125.—(1) Except as otherwise expressly provided nothing in this Act shall prevent the sale Certain tinctures, medicines, perfumes, etc.

- (a) by a druggist or by the manufacturer, of
- (i) any tincture, fluid extract, essence or medicated spirit containing alcohol prepared according to a formula of the British Pharmacopœia or other recognized standard work on pharmacy, or
  - (ii) medicine or other similar officinal or pharmaceutical compound or preparation, or

- (iii) a perfume, or
- (iv) for purely medicinal purposes, any mixture so prepared containing alcohol and other drugs or medicine; nor

(b) by a merchant who deals in drugs and medicines, of such compounds, mixtures and preparations as are in this section hereinbefore mentioned and are so made or put up by a druggist or manufacturer,

by reason only that the same contain alcohol, but this shall only apply to any such compound, mixture and preparation as contains sufficient medication to prevent its use as an alcoholic beverage. 1916, c. 50, s. 126; 1918, c. 40, s. 25.

Unreasonable quantity.

(2) If in any prosecution for selling any of the products mentioned in this section, the magistrate hearing the complaint is of opinion that an unreasonable quantity of any such product, having regard to the purposes for which the same was legitimately manufactured, was sold or otherwise disposed of to any person either at one time or at intervals and proof is also given that such product was used for beverage purposes, the person selling or otherwise disposing of the same may be convicted of an offence under section 40 of this Act. 1922.

When a merchant or druggist sells any preparation containing more than  $21\frac{1}{2}\%$  proof spirits he must bring himself within the protection afforded by sec. 131 or sec. 125 (a) or (b) and the onus is on him to shew that the preparation contains sufficient medication to prevent its use as an alcoholic beverage. *R. v. Axler*, 40 O.L.R. 304; *R. v. Warne Drug Co.*, 37 D.L.R. 788, 29 Can. Cr. Cas. 384, 40 O.L.R. 469.

Proof may be given that the liquor in question has been used as an alcoholic beverage.

Sale of essences, tinctures, and flavoring extracts.

**125a.**—(1) Notwithstanding anything contained in section 125 of *The Ontario Temperance Act* no essence, tincture, compound or preparation commonly known or described as a flavoring extract or essence containing alcohol shall be sold

except in bottles containing not more than two and one-half ounces, and a record of the sale of same shall be kept by the manufacturer, merchant, druggist or other person who sells the same in a book provided for that purpose, which shall shew the name and address of such person to whom any such article is sold, the date of sale and the quantity sold, and this record shall be open to the inspection of any license inspector or any officer authorized by the Board to make such inspection and a true copy thereof under oath shall be supplied to the Board forthwith on demand by the proprietor of the business upon whose premises any such sale was made, or company dealing in drugs and medicines, or a merchant. Provided, however, that nothing in this section contained shall prevent the sale of any such essence, tincture, or flavoring extract in a larger quantity than two and one-half ounces to a druggist or a manufacturer of confectionery or other similar commodity or to a person in any trade or business in which any such article is commonly used for legitimate purposes or to any public institution or to a wholesale dealer for re-sale to any of the persons mentioned in this proviso, but all such sales shall be recorded in a book as above mentioned by the person selling the same and in all other respects the provisions of this subsection shall apply thereto.

(a) This subsection shall not apply to any preparation containing less than two and one-half per cent. of proof spirits.

(2) No pedlar or transient trader in Ontario shall sell or dispose of any tincture, essence or extract mentioned in the preceding subsection.

Proviso.  
Pedlars  
and transient  
traders  
not to sell.

(3) Unless upon the order of a duly qualified medical practitioner no druggist shall sell or dispose of any tincture, essence or extract of ginger except to a person having a permanent place of residence in the city, town, village or district in which such sale takes place and then only upon the affidavit made by the person requiring the same in the form in Schedule "G" hereto, stating that it is not required for beverage purposes. Upon receiving such affidavit and being satisfied

Extract  
of ginger.

that such tincture, essence or extract is required for legitimate purposes, the druggist may supply a quantity not exceeding two ounces and all the provisions of subsection 1 hereof shall apply to any such sale.

Exceptions.

(4) The provisions of the next preceding subsection shall not affect the sale or purchase of any such tincture, essence or extract of ginger by or between wholesale dealers, druggists, manufacturers of confectionery, persons carrying on any trade or business where the same is required for legitimate purposes or where it is needed in a public institution.

Not to be sold by others than druggists.

(5) Except as in this section provided no person other than a druggist shall sell or dispose of any tincture, essence or extract of ginger.

Penalty.

(6) Any violation of this section shall be an offence against this Act and the person committing the offence shall upon conviction incur the penalties provided by section 59 hereof. 1918, c. 40, s. 26.

Colourable sales.

126.—(1) Where the magistrate before whom a complaint is heard finds that any patent or proprietary medicine mentioned or referred to in section 124 or any other medicine, preparation or mixture mentioned or referred to in section 125 does not contain sufficient medication to prevent the same being used as an alcoholic beverage, the offender shall incur the penalties imposed by this Act as in the case of sale of liquor without the license required by law.

Charging offence.

(2) It shall not be necessary in the information, summons, warrant, distress warrant, commitment or other process or proceeding, except the finding or judgment, to set out that such patent or other medicine, preparation or mixture does not contain sufficient medication to prevent the same being used as an alcoholic beverage, but it shall be sufficient if the complaint and all other necessary statements of the offence allege or refer to the sale of liquor in contravention of this Act.

(3) The Provincial Board of Health, on complaint being



made to the said Board that any patent or proprietary medicine is believed not to contain sufficient medication to prevent its use as an alcoholic beverage, may cause an analysis of such medicine to be made by some competent person and if it be proved to the satisfaction of the said Board that such patent or proprietary medicine contains more than  $2\frac{1}{2}$  per cent. of proof spirits and that the medication found therein is not sufficient to prevent its use as an alcoholic beverage the Board shall certify accordingly.

(4) The certificate mentioned in the next preceding subsection shall be received in all courts as conclusive evidence of the facts therein stated if such certificate purports to be signed by some member of the said Board and an affidavit is attached thereto attesting the signature of such member.

To be  
conclusive  
evidence.

The certificate mentioned in sub-sec. (4) applies only to patent, or proprietary medicines.

(5) If the said Board should find and certify that the said patent or proprietary medicine contains any medication which owing to the alcoholic properties of the medicine would be liable to be taken in quantities injurious to health, the sale of such patent or proprietary medicine, after a copy of such certificate has been consecutively published twice in the *Ontario Gazette*, shall be an offence against *The Ontario Temperance Act* unless the same has been so sold upon the written order of a medical practitioner.

When  
alcohol  
present in  
injurious  
quantities

(6) On any enquiry under this section any interested party may be heard either personally or by counsel or solicitor by the Board of Health before any certificate is issued. 1918, c. 40, s. 27.

Hearing.

127.—(1) A druggist or other person who keeps patent or proprietary medicines for sale shall, upon request made by the Inspector or other person authorized by the Board, permit such Inspector or other person to take away a sample sufficient for the purpose of analysis of any patent or proprietary medicine kept by him for sale.

Analysis  
of patent  
medicines  
kept by  
druggists.

Penalty.

(2) Any person who refuses to comply with such a request shall incur a penalty of not less than \$10 nor more than \$40. 1916, c. 50, s. 127.

Sale of liquor by druggists.

128.—(1) Nothing in this Act shall prevent a druggist from keeping liquor for sale for strictly medicinal purposes, or from selling liquor for strictly medicinal purposes in packages or not more than six ounces at any one time, or from selling for strictly medicinal purposes any mixture containing liquors mixed with any other drug or medicine in packages of not more than one pint at any one time, or from selling alcohol not exceeding one pint for bathing a patient or for other necessary purposes, but in every case only under a *bona fide* prescription of such alcohol, liquor or mixture duly signed by a legally qualified medical practitioner, nor from selling to such practitioner or superintendent of any hospital, upon his written order one quart of liquor for use in the practice of his profession or in such hospital, nor shall anything in this Act prevent a druggist selling to a dentist personally who is a duly registered member of the Royal College of Dental Surgeons of Ontario, of liquor for use in his profession only, but not in a greater quantity than six ounces at one time, and to a veterinary surgeon qualified as provided by *The Veterinary Surgeons Act*, and who is lawfully and regularly engaged in the practice of his profession, for use in his profession only, but not in a greater quantity than one quart at any one time; provided that in either case such sale shall be recorded as provided by this Act, and shall only be sold by such druggist upon the written order of the dentist or veterinary surgeon as the case may be.

Sales to dentist and veterinary authorized.

Rev. Stat., c. 171.

Dentist's right to keep ethylic alcohol.

(a) Notwithstanding anything in this Act contained, a dentist may have in his possession, in addition to what is otherwise allowed, one quart of ethylic alcohol for purely mechanical purposes but for no other purpose, and a druggist may sell such alcohol to such dentist upon his written request. 1916, c. 50, s. 128 (1); 1917, c. 50, s. 42.

Record of sales.

(2) Every druggist shall record in a book to be kept for that purpose every sale or other disposal by him of alcohol or

other liquor when sold by itself or forming the principal ingredient in such prescription; and such record shall show as to every such sale or disposal, the time when, and the person to whom the same was made, the quantity sold and the prescription, when one is required, of such medical practitioner; and in default of such sale or disposal being so placed on record, every such sale shall be held to be in contravention of the provisions of this Act and upon conviction shall incur the penalties provided by section 59 of this Act. 1916, c. 50, s. 128 (2); 1917, c. 50, s. 43 (1) (Vide also ss. 36 and 38.)

(3) Such book shall be kept open to the inspection of the License Commissioners, Inspector, Provincial Inspector, or any other person appointed by the Board, and producing his written authority in that behalf, and may be in the following form:

Book open to inspection by Commissioners, Inspectors and other officials.

Date	Name	Residence	Kind and quantity	Purpose or use	Price	Name of medical practitioner

1916, c. 50, s. 128 (3).

(4) In a township a druggist who is also a legally qualified medical practitioner may himself give the prescription provided for by this section, and may also give such prescription in any village or police village where there is no other legally qualified medical practitioner resident and practising therein, but not otherwise. 1916, c. 50, s. 128 (4); 1918, c. 40, s. 28.

When druggist may himself give medical prescription.

(5) Any druggist who sells or otherwise disposes of any liquor to be consumed within his shop, or within the building of which such shop forms part or which communicates by any entrance therewith, either by the purchaser or by any other person not usually resident therein, as a beverage, or

Selling liquor with other beverages.

with soda water, seltzer, apollinaris, ginger ale, ginger beer, sarsaparilla, or any aerated, mineral or effervescent drink, shall incur the penalties imposed by section 59 of this Act. 1916, c. 50, s. 128 (5).

Wine for  
sacramental  
purposes.

(6) Nothing in this Act shall prevent a druggist from selling wine for sacramental purposes to a minister of the gospel upon his written request, which may be in the form of Schedule "E," or such wine may be supplied on the written order of an officer of the church or religious denomination duly authorized in writing by the minister of such church or denomination to procure the same. 1916, c. 50, s. 128 (6); 1917, c. 50, s. 43 (2).

Drugs  
mixed with  
alcohol.

129. Nothing in this Act shall apply to or prevent the sale by a druggist of any drug or medicine for strictly medicinal purposes, notwithstanding the mixture with such drug or medicine of liquor as one of the necessary and *bona fide* ingredients thereof if such mixture contains sufficient medication to prevent its use as an alcoholic beverage. 1916, c. 50, s. 129; 1917, c. 50, s. 44.

Sales of  
liquor by  
druggists  
in case of  
accidents,  
etc.

130.—(1) Nothing in this Act shall prevent a druggist from selling, without the certificate of a legally qualified medical practitioner, liquor in quantities of not more than six ounces at any one time when the same is required owing to a serious injury or to the fainting of a person who may be brought or shall come into the premises of the druggist or into contiguous premises, or in or upon premises adjacent to them, and the same is urgently required for the relief of such person. 1916, c. 50, s. 130 (1).

(2) Exclusive of alcohol and sacramental wine, no druggist shall have in his possession at any one time more than ten gallons of liquor. 1916, c. 50, s. 130, (2); 1917, c. 50, s. 46.

How drug-  
gist may  
exculpate  
himself.

131. If a druggist is charged with a contravention of any of the provisions of section 124 or 125 of this Act, but proves that he sold the compound, mixture or preparation in question in the same state as when he purchased it and that

he could not with reasonable diligence have obtained knowledge of the fact that the provisions of that section had not been complied with, he shall not be found guilty; but the magistrate hearing the case may order that such compound, mixture or preparation found in the possession of such person be forfeited to the Crown; and the Minister may make such disposition of it as he may think fit. 1916, c. 50, s. 121; 1917, c. 50, s. 46.

Forfeiture  
of the  
article.

132. Any druggist who keeps for sale or who sells or barter any liquor in contravention of this or any other Act shall, for the first offence, on conviction thereof, incur the penalties imposed by section 59 for selling, and for a second or any subsequent offence shall, on conviction thereof, incur the penalty imposed by said section as for a second offence for selling; and in addition thereto, his certificate authorizing him to carry on the business of a "chemist and druggist" in Ontario shall *ipso facto* be void and be of no force or effect whatever for a period of two years from the date of his conviction, a copy of which shall forthwith be sent to the Registrar of the Ontario College of Pharmacy, or until the Council of such College shall see fit, in its discretion, after the expiration of such period of two years, to reinstate such druggist, who shall not in the meantime be eligible as a member, director or shareholder of any incorporated company dealing in drugs or medicine in Ontario. 1916, c. 550, s. 132.

Penalty for  
sale by  
druggist  
without  
license.

133.—(1) Every druggist shall within seven days after demand by the Board supply the Board with a written statement verified by affidavit of the amount and kind of liquor purchased by him during the period specified in such demand, the dates when and the persons from whom such liquor was purchased, with such further details as the Board may require. 1916, c. 50, s. 133 (1); 1920, c. 78, s. 16. (Vide also ss. 36 and 38.)

Sworn  
statement  
as to  
amount of  
liquor  
purchased.

(2) Any person who makes default in supplying such statement shall incur a penalty of \$20 for each day during which such default continues, and such penalty may be re-

Penalty.

Recovery  
of penalty.

covered by summary proceedings before a police magistrate or two justices of the peace. 1916, c. 50, s. 133; 1918, c. 40, s. 29.

Sales by  
wholesale  
druggists.

134. A wholesale druggist may, notwithstanding anything in this Act, sell to a druggist "ethylic" or absolute alcohol for use in his business as such druggist, but this provision shall only apply to wholesale druggists who have filed with the License Branch at Toronto a certificate, which shall be annually renewed not later than the 1st day of May in each year, signed by the Registrar of the Ontario College of Pharmacy, that the holder of such certificate is a wholesale druggist within the meaning of this Act. 1916, c. 50, s. 134.

#### MUNICIPALITIES UNDER THE CANADA TEMPERANCE ACT.

Municipal  
councils  
may aid in  
enforcing  
The Canada  
Temperance  
Act.

135. The council of any county or city in which the second part of *The Canada Temperance Act is in force*, may, from time to time, set apart any sum or sums of money for the purpose of paying any officer or officers, person or persons, for enforcing, or assisting to enforce *The Canada Temperance Act* within their respective jurisdictions, and for the payment of any costs or expenses incurred in and about enforcing, or attempting to enforce, the same; and such councils are hereby authorized and empowered to appoint one or more officers or persons to enforce, or assist in enforcing, the provisions of that Act, and to pass by-laws for the government and control of such officers or persons, and defining their duties and mode and amount of payment. 1916, c. 50, s. 135.

R.S.C. c. 152.

Expenses of  
enforcing  
this Act  
in municipa-  
lities  
under the  
Temperance  
Acts.  
R.S.C. c. 152.

136.—(1) Where the second part of *The Canada Temperance Act* is in force the expenses of carrying the same into effect, except as in hereinafter provided, shall be borne and paid by the county or city within which the same is in force.

How and  
when pay-  
able.

(2) The expenses payable under this section by a county or city shall be paid by it into such bank as the Minister may direct to the credit of *The Canada Temperance Act Fund*, and shall become due and payable within one month after an

estimate of the amount of the expenses for the current license year has been made by the Board, and approved by the Minister (which approval shall be final and conclusive) and after a copy or duplicate of such estimate and approval, together with a notice in writing by the Board, requesting payment of the amount payable by the municipality has been served upon the clerk of the county or city, on such days and times as by the said request or notice are named for that purpose; and in case any estimate proves insufficient for the payment of the expenses of the license year any deficiency may be provided for in the estimate for the succeeding year; and in case any sums remain unexpended in any year, the same may be applied on account of the expenses of the succeeding year.

(3) Payment may be enforced against any county or city by the Board by action or proceedings in the name and by the title of "The Board of License Commissioners for Ontario," and it shall not be necessary to mention or include the names of the License Commissioners in the proceedings; and the action or proceedings may be carried on in the name of such Board as fully and effectually as though such Board were incorporated under such name or title; and in the event of the death or resignation of any of the License Commissioners, or of the appointment of other License Commissioners, the action or proceedings shall not cease, abate or determine, but shall proceed as though no change had been made in the Board of License Commissioners, and, in the event of the Board being condemned in costs, the same may be payable out of *The Canada Temperance Act Fund* for the county or city, as the case may be. 1916, c. 50, s. 136.

Payment of proportion how enforced.

137.—(1) In case the fines and penalties imposed and collected under and by virtue of *The Canada Temperance Act* are insufficient to meet the expenses incurred in the enforcement of that Act the Treasurer of Ontario may pay into the License Fund out of the Consolidated Revenue Fund a sum not exceeding one-half the amount which the municipality is required to pay for on account of such expenses over and above the fines and penalties so collected.

Provision for enforcement of Canada Temperance Act where fines insufficient.

Account of  
fines and  
amount  
contributed  
by county  
or city.

(2) The treasurer of the county or city to which the fines are payable shall keep a separate account of the fines received and also of the amount paid or contributed by the municipality towards the expenses of enforcing the Act, and the Province shall not be called upon to pay any proportion of the expenses so long as there is a balance at the credit of the said account.

Audit.

(3) The separate account mentioned in the next preceding subsection shall be subject to audit by an officer of the License Branch; such audit may take place at the office of the treasurer of such county or city and the certificate of such officer when approved by the Minister shall be sufficient evidence of the correctness of such separate account.

County not  
to include  
district.

(4) The word "county" when used in this section and in section 136 shall not include a provisional judicial district. 1916, c. 50, s. 137.

Payment of  
appropriation  
for enforcement  
of C. T. Act.

138. Whenever an appropriation is made by the Legislature for enforcing *The Canada Temperance Act*, the Minister may by his order direct the payment out of such appropriation of any sum or sums which he may find necessary from time to time for the enforcement of the said Act in a provisional judicial district during the time that Act is in force in such district. 1916, c. 50, s. 138.

Transac-  
tions be-  
tween per-  
sons in  
Ontario  
and persons  
out of  
Ontario.

139. While this Act is intended to prohibit and shall prohibit transactions in liquor which take place wholly within the Province of Ontario, except under license or as otherwise especially provided by this Act, and to restrict the consumption of liquor within the limits of the Province of Ontario, it shall not affect and is not intended to affect *bona fide* transactions in liquor between a person in the Province of Ontario and a person in another Province or in a foreign country, and the provisions of this Act shall be construed accordingly. 1916, c. 50, s. 139.

The provisions of Part IV. of the Canada Temperance Act enacted by 1919 (Can.), 2nd Sess., ch. 8 and made operative as to Ontario by Order in Council dated June 18, 1921;



supersede the provisions of sec. 129 as far as they apply to the importation of liquor in Ontario.

Section 139 must be construed as an over riding section to which other provisions of the Act must be interpreted as subsidiary if they appear in any way to conflict with it. *Graham and Strang v. Dominion Express Co.*, 55 D.L.R. 39, 35 Can. Cr. Cas. 145, 48 O.L.R. 83; *R. v. Toyne* (1916), 38 O.L.R. 224; *R. v. McEvoy* (1916), 28 Can. Cr. Cas. 135, 38 O.L.R. 202; *R. v. Lemaire*, 57 D.L.R. 631, 34 Can. Cr. Cas. 254, 48 O.L.R. 475; *Gold Seal Ltd. v. Dominion Express Co.* (1921), 58 D.L.R. 51, 34 Can. Cr. Cas. 259, 16 Alta. L.R. 113.

**139a.** In the event of the importation of intoxicating liquor into the Province of Ontario for beverage purposes being prohibited under the provisions of sections 153 and 154 of *The Canada Temperance Act* as enacted by chapter 8 of an Act passed by the Parliament of Canada in the tenth year of the reign of His Majesty, King George V, section 139 of *The Ontario Temperance Act* shall, upon the issue of the proclamation of the Lieutenant Governor in Council provided for by section 10 of *The Liquor Transportation Act, 1920*, be deemed to be amended to the extent necessary to give full effect to the said prohibition and to the provisions of the said last-mentioned Act. 1921, c. 73, s. 7.

Amendment of S. 139 in conformity with prohibition of importation.

**140.** Nothing contained in this Act shall be construed to interfere with the operation of *The Canada Temperance Act* or any other Act of the Parliament of Canada applicable to the Province of Ontario or any part thereof. 1916, c. 50, s. 140.

Canada Temperance Act not affected.

*R. v. Thorburn* (1917), 39 D.L.R. 300, 29 Can. Cr. Cas. 329, 41 O.L.R. 39.

**141.** Notwithstanding anything contained in *The Liquor License Act*, the Board may, by resolution, provide for extending the duration of any existing tavern, shop or club license from the first day of May, 1916, until the date on

Renewal of existing licenses until commencement of Act.

which this Act shall come into force, upon the payment of Five Dollars, but this shall not apply to any license granted and now in force in respect of premises situate in any municipality in which a local option by-law has been adopted, and which will, in pursuance of the Statute in that behalf, come into force on the first day of May, 1916. 1916, c. 50, s. 141.

Repeal of  
Rev. Stat.,  
c. 215, s. 39.

142. Section 39 of *The Liquor License Act* is repealed, such repeal to take effect on the first day of May, 1916, but this shall not affect the payment over or collection of any moneys due to the Province under the said section up to and inclusive of the 30th day of April, being the end of the current license year. 1916, c. 50, s. 142.

Extending  
brewers' and  
distillers'  
licenses.

143. Brewers' and distillers' provincial licenses, brewers' warehouse licenses and wholesale licenses issued under *The Liquor License Act*, and in force on the 20th day of April, 1916, being the end of the current license year, may be extended from the date last mentioned until the date on which the repeal of *The Liquor License Act* aforesaid is to take effect, in pursuance of section 150 of this Act, but such extension shall be subject to the payment of Five Dollars. 1916, c. 50, s. 143.

Fee for  
vendor's  
license.

144. The fee to be paid annually for a vendor's license issued under this Act shall be \$5.00. 1916, c. 50, s. 144.

Lease of  
licensee  
terminable  
on three  
months'  
notice.

145. Every lease of premises for or in respect of which a tavern, shop or wholesale license under *The Liquor License Act* is in force at the passing of this Act, and every lease of premises used as a warehouse for liquor by any person holding a tavern, shop or wholesale license as aforesaid, up to the date on which *The Ontario Temperance Act* came into force, shall, with the written approval of the Board, be terminable by the lessor or lessee giving three months' notice of his intention to cancel such lease. 1916, c. 50, s. 145; 1917, c. 50, s. 47.

National Trust Co. v. Hannan (1918), 15 O.W.N. 54.

Licensing  
hotels.

146.—(1) From and after the date on which *The Ontario*

*Temperance Act* comes into force the Board of License Commissioners for Ontario may license one or more hotels in every municipality for the accommodation of the travelling public and other guests, and every such license shall be deemed to be a license to the person and for the premises therein described. 1916, c. 50, s. 146 (1); 1917, c. 50, s. 48.

(2) The Board may by resolution define the conditions, accommodation and qualifications requisite for obtaining such license and regulate the hotels so licensed. Regulations.

(3) The hotels so licensed shall be known as Standard Hotels. "Standard hotels."

(4) The annual fee to be paid for such license shall be \$1.00. License fee.

(5) The keeper of a Standard Hotel shall be entitled to sell all non-intoxicating drinks and beverages, cigars, cigarettes and tobacco, and to conduct an ice cream or general restaurant or cafe without further or other license. 1916, c. 50, s. 146 (2)—(5). Privileges of licensee.

*R. v. Boileau*, 36 D.L.R. 781, 28 Can. Cr. Cas. 144, 38 O.L.R. 607.

(5a) No restaurant license or other license to sell the articles or commodities or any of them mentioned in subsection 5 hereof, shall without the consent of the Board be issued by any municipality or under its authority in respect of any premises which form part of a building in which an unlicensed hotel, inn or house of public entertainment is carried on, whether or not there are any internal means of communication between the respective premises. 1920, c. 78, s. 17 (1). Control of restaurant licenses.

(6) The keeper of any hotel, inn or house of public entertainment not so licensed as aforesaid shall not sell or traffic in any of the articles mentioned in the preceding subsection, and any such keeper who violates this subsection shall be Penalty for sales of certain articles in unlicensed premises.

guilty of an offence under this Act. 1916, c. 50, s. 146. (6); 1918, c. 50, s. 31; 1920, c. 78, s. 17 (2).

Cancelling  
license.

(7) The Board may cancel any such license at any time for such reason as to the Board may seem sufficient.

Power to  
grant tax  
exemptions.

(8) The council of any municipality may by by-law grant any such Standard Hotel total or partial exemption from municipal taxation, except school and local improvement taxes. 1916, c. 50, s. 146 (7), (8).

NOTE.—Section 51 of 1917, c. 50 which authorized the councils of local municipalities to pass by-laws granting exclusive rights in the retail sale of certain temperance beers and other beverages was repealed by 1921, c. 73, s. 8.

147. (Repealed by *The Temperance Referendum Act, 1919*. 1919, c. 61, s. 2, and omitted here as being spent.)

Business  
assessment  
not to be  
collected  
for 1916.

148.—(1) Notwithstanding the provisions of *The Assessment Act*, no distiller, brewer, maltster or holder of a tavern, shop or wholesale license or a club, in which spirituous or fermented liquors are furnished, shall be liable for nor shall any municipal corporation levy or collect from any such person or club any taxes for the year 1916, in respect of business assessment. 1916, c. 50, s. 148 (1).

Exemption  
from  
business  
assessment.

(2) The provisions of subsection 1 of this section, so far as they apply to brewers and maltsters, shall be extended to the year 1917, provided such brewer or maltster has since this Act came into force continued to occupy the lands on the value of which the last business assessment of such brewer or maltster, either during or prior to 1916, was made, and should such occupancy of the land in question be discontinued this subsection shall not apply.

Exemption  
of standard  
hotels.

(3) The provisions of subsection 1 of this section shall also apply to the keeper of every standard hotel holding a license under section 146 of this Act, during any of the years 1917, 1918 and 1919, and no municipal corporation shall levy or collect from any such person any taxes in respect

of business assessment for any one of said years during which such persons hold such license. 1917, c. 50, s. 50.

(4) Notwithstanding the provisions of *The Assessment Act*, no distiller, brewer or maltster shall be liable for, nor shall any municipal corporation levy or collect from any such person any taxes for the year 1918, in respect or business assessment. 1918, c. 40, s. 33.

Distillers, brewers, maltsters not to be liable for business assessment for 1918.

149. This Act shall come into force at seven o'clock in the afternoon of Saturday, the 16th day of September, A.D. 1916, but the provisions of this Act with respect to applications for licenses or all matters connected therewith or appertaining thereto and with respect to the issue of such licenses may be resorted to, applied and followed at any time before the said date for the purpose of procuring the issue of licenses under this Act to take effect on and from the date of the coming into force of this Act. 1916, c. 50, s. 149.

Commencement of Act.

150. *The Liquor License Act*, being Chapter 215 of the Revised Statutes of Ontario, 1914, and all amendments thereto are repealed, such repeal to take effect at the hour of seven o'clock in the afternoon of Saturday, the 16th day of September, 1916. 1919, c. 50, s. 150.

Repeal of Rev. Stat., c. 215 to take effect 16th September.

\*\*151.—(1) No person shall take or continue any action or proceeding in or out of Court for the purpose of enforcing any contract or any right or remedy arising out of the same for the breach thereof, or arising out of any renewal or extension of said contract or the breach of such renewal or extended contract, where the original contract was made prior to the 27th day of April, 1916, and was made for or in respect of or arose directly or indirectly out of the purchase of:—

Actions, etc., not to be brought on certain contracts without consent of the Board.

(a) any premises in Ontario for which a license was at the said date in force for tavern, brewery or distillery purposes;

(b) any licensed hotel, brewery or distillery business in Ontario;

(c) the bonds, debentures, capital stock or other securities of any licensed hotel, brewery or distillery corporation having its head office in and carrying on a business in Ontario at the said date;

except by leave of the Board of License Commissioners for Ontario made upon application to the Board and after such notice to all parties as the Board may direct.

Terms of  
order.

(2) The Board upon any such application may, by order in writing, prohibit, restrict or limit in such manner as it may deem just and reasonable, any such action or proceeding, and may impose such terms upon any party as it may deem just.

Powers of  
Board on  
application.

(3) On such application the Board may grant or refuse the same, in whole or in part, or delay or adjourn or postpone, the hearing and disposition of the application on such terms as it shall deem proper, but such delay, adjournment, refusal or postponement, shall not preclude the Board from hearing any subsequent applications for the same thing, or from varying, altering, amending or rescinding, in whole or in part, any order made by it under this Act.

Section  
not to  
apply to  
recovery  
of interest,  
taxes,  
rent, etc.

(4) Subsections 1, 2 and 3 shall not apply to proceedings taken for the recovery of interest (including arrears of interest, which may under the terms of any such mortgage or extension or renewal have been, or may be, added to the principal money secured thereby), or rent, or taxes, or insurance or other disbursement for which the mortgagor or purchaser was liable in the first instance, and as to which he is in default, nor to any proceeding or act done by a mortgagee in possession of the 27th day of April, 1916, with respect to land or any interest in land of which he is the mortgagee, nor to proceedings taken for the recovery of interest, taxes, insurance or other disbursements payable by the mortgagor in the first instance under a mortgage and paid or tendered in his default by the holder of a subsequent mortgage of the same lands.

(5) Where default is made in payment of interest, rent, taxes, insurance or other disbursements which a mortgagor or purchaser has covenanted or undertaken to pay, the mortgagee or vendor, his assignee or personal representative, may have the same remedies and may exercise them to the same extent, and the consequences of such default shall in all respects be the same as if this Act had not been passed, but where such interest, rent, taxes or other disbursements are paid into Court or tendered to the mortgagee, vendor, assignee or personal representative, he shall not continue any proceedings already commenced by him, without the order required by section 1. 1917, c. 50, s. 52 (1-5).

Proceedings on default of payment of interest or rent.

(6) This section shall have effect during the year 1921 and until the close of the session of the Legislature next following. 1921, c. 73, s. 4.

Duration of moratorium.

*\*\*NOTE.—This section is numbered 151 for convenience only and should be referred to as section 52 of The Ontario Temperance Amendment Act. 1917.*

**\*\*152.**—(1) No person shall take or continue an action or proceeding in or out of Court for the purpose of enforcing any contract by or with any brewer duly licensed by the Government of Canada for the purchase of hops or any right or remedy arising out of any renewal or extension of said contract or the breach of such renewal or extended contract, where the original contract was made prior to the 27th day of April, 1916, except by leave of the Board of License Commissioners for Ontario, made upon application to the Board and after notice to all parties as the Board may direct.

Contracts for purchase of hops.

(2) The Board upon any such application may by order in writing, prohibit, restrict or limit in such manner as it may deem just and reasonable any such action or proceeding and may impose such terms upon any party as it may deem just.

Powers of Board on application.

(3) On such application the Board may grant or refuse the same in whole or in part, or delay or adjourn or postpone, the hearing and disposition of the application on such

Powers of Board.

terms is it shall deem proper, but such delay, adjournment, refusal or postponement, shall not preclude the Board from hearing any subsequent applications for the same thing, or from varying, altering, amending or rescinding in whole or in part any order made by it under this Act. 1917, c. 50, s. 54.

**\*\*NOTE.**—*This section is numbered 152 for convenience only and should be referred to as section 54 of the Ontario Temperance Amendment Act, 1917.*

Effect of  
remission  
of fine.

**\*\*153.**—(1) Where a fine, penalty or forfeiture has been or is hereafter remitted, pursuant to authority contained in *The Fines and Forfeiture Act* so to do, such remission shall constitute also an annulment of the said conviction and thereupon the record of such conviction shall thereby be deemed to have been and to be cancelled and avoided as if the same had never been made.

Commence-  
ment of  
section.

(2) This section shall be deemed to be and to have been effective from the 27th day of April, 1916. 1917, c. 50, s. 55.

**\*\*NOTE.**—*This section is numbered 153 for convenience only and should be referred to as section 55 of the Ontario Temperance Amendment Act, 1917.*

Suspension  
of certain  
sections  
during  
Dominion  
prohibition.

**\*\*154.** During the time any statute of the Parliament of Canada or any Order-in-Council passed thereunder is in force, the effect of which is to prohibit the transportation of liquor into or out of this province for any purpose, sections 43, 45, 46 and 139 of *The Ontario Temperance Act* shall be deemed to be suspended to the extent necessary to conform to the provisions of such statute or order.

(a) Nothing in this section or in *The Ontario Temperance Act* contained shall be deemed to prevent the owner of liquor in his private capacity within the province transporting the same or any part thereof from any place where the same may be lawfully kept to any other premises or place



where the same may be lawfully kept, and which such owner controls within the Province of Ontario, provided that the ownership in such liquor remains unchanged. 1918, c. 40, s. 30.

**\*\*NOTE.**—*This section is numbered 154 for convenience only and should be referred to as section 30 of the Ontario Temperance Amendment Act, 1918.*

## 10-11 George V, c. 80 (1920.)

(This Act may be brought into force by Proclamation.)  
See Section 10.

An Act respecting the Transportation of Intoxicating  
Liquors.

*Assented to June 4th, 1920.*

**H**IS MAJESTY, by and with the advice and consent of  
the Legislative Assembly of the Province of Ontario,  
enacts as follows:—

- |   |   |
|---|---|
| Short title.  | 1. This Act may be cited as <i>The Liquor Transportation Act, 1920.</i> 1920, c. 80, s. 1.  |
| Interpre-<br>tation<br>"Board,"<br>"Liquor."        | 2. In this Act the word "board" and the word "liquor" shall have the same meaning as in <i>The Ontario Temperance Act.</i> 1920, c. 80, s. 2.   |
| Extent of<br>effect of<br>Act.                      | 3. This Act shall be read with and as part of <i>The Ontario Temperance Act.</i> 1920, c. 80, s. 3.   |
| Illegal<br>transporta-<br><br>tion and<br>delivery. | 4.—(1) Every person within the Province of Ontario who, by himself, his servant or agent,<br><br>(a) Transports or carries liquor within Ontario for sale or consumption within the Province; or<br><br>(b) Transports or carries liquor from any brewery, distillery, warehouse, storehouse, dock, railway station or other place or premises within Ontario to any other place or premises or to any person in Ontario, for sale or consumption within the Province; or<br><br>(c) Delivers liquor to any person in Ontario for sale or consumption within the Province; or |

(d) Receives or takes delivery of liquor in Ontario for sale or consumption within the Province,

shall be guilty of an offence and such liquor, wherever the same may be found, may be seized and dealt with in the manner provided by section 70 of *The Ontario Temperance Act* and every person guilty of such offence shall be subject to the penalties provided by section 58 of the said Act.

Offence.

1916,  
c. 50.

(2) In any prosecution under subsection 1 the burden of proof that liquor transported, carried, delivered or received in or within Ontario was not so transported, carried, delivered or received for sale or consumption in or within Ontario shall be upon the defendant. 1920, c. 80, s. 4.

Onus of proof.

5. The provisions of *The Ontario Temperance Act* respecting the recovery of penalties and the procedure upon prosecutions and generally as to the enforcement of that Act shall, so far as the same are applicable, apply *mutatis mutandis* to prosecutions under this Act, and to the enforcement of this Act. 1920, c. 80, s. 5.

Application of certain sections of

c. 50.

6. Nothing in this Act contained shall prevent or apply to,

Exceptions.

(a) The sale, carriage, transportation or delivery of liquor for export from Ontario;

Export trade.

(b) The carriage or transportation of liquor through Ontario from any place out of Ontario to any other place out of Ontario;

Trans-provincial transportation.

(c) The sale, carriage, transportation or delivery of liquor by or under the order of the Board;

Transactions of Board.

(d) The carriage, transportation, receiving or taking delivery of liquor which may be lawfully sold, carried, transported or delivered under section 43 of *The Ontario Temperance Act* or section 30 of *The Ontario Temperance Amendment Act*, 1918. 1920, c. 80, s. 6; 1921, c. 73, s. 9.

Receiving liquor lawfully transported.

Rights  
and  
powers of  
Board.

7. Nothing in this Act contained shall apply to or affect the rights and powers of the Board to purchase, import, sell, supply or deliver liquor for any purpose permitted by *The Ontario Temperance Act*. 1920, c. 80, s. 8.

1916,  
c. 50, s. 43,  
amended.

8. Section 43 of *The Ontario Temperance Act* is amended by striking out the words therein after the word "sale" in the fifth line. 1920, c. 80, s. 8.

Exception  
as to  
native  
wines.

9. Nothing in this Act shall affect or apply to the sale, carriage, transportation or delivery of native wines so far as the same may be lawful under section 44 of *The Ontario Temperance Act*. 1920, c. 80, s. 9.

Commence-  
ment of  
Act.

10. This Act shall not come into force or take effect until after a date to be named by the Lieutenant-Governor in Council by his proclamation, nor until after the Governor-General in Canada has by order-in-council made the declaration provided for in section 153 of *The Canada Temperance Act* passed by the Parliament of Canada in the tenth year of His Majesty's reign. 1920, c. 80, s. 10.

This Act came into force on the 19th of July, 1921, by virtue of a Royal Proclamation dated the 6th of July, 1921.

An Act respecting the Carriage of Liquor on Highways.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1. This Act may be cited as *The Carriage of Liquor Act, 1922*. Short title.
  
2. In this Act "Board" and "liquor" shall have respectively the same meaning as in *The Ontario Temperance Act*. Interpretation "Board," "Liquor."
  
- 3.—(1) Except as hereinafter provided, every person who by himself, his servant, agent or employee, and every person who as such servant, agent or employee transports or carries liquor in any vehicle, or in any other manner, over, along or upon a highway, street, road bridge, lane or other public place owned or controlled by or vested in the Crown or any commission or in a municipal corporation or other public body in Ontario shall be guilty of an offence, and such liquor, wherever the same may be found, may be seized and dealt with in the manner provided in section 70 of *The Ontario Temperance Act*, and every person guilty of such offence shall incur a penalty of not less than \$200 and not more than \$2,000, and in addition thereto may in the discretion of the convicting magistrate be imprisoned for a period not exceeding three months, and in default of immediate payment of such penalty shall be imprisoned for a period of not less than three nor more than six months, and for a second or any subsequent offence shall incur the like pecuniary penalty as in the case of a first offence and shall be imprisoned for a period of not less than three nor more than six months. Carriage of liquor on highway prohibited.  
  
Penalty
  
- (2) In any prosecution under this Act the burden of proof that the liquor transported or carried was not so transported or carried contrary to the provisions of this Act shall be upon the defendant. Burden of proof.
  
- (3) The provisions of *The Ontario Temperance Act* respecting the recovery of penalties, and the procedure upon Application of 1916, c. 50.

prosecutions and appeals shall so far as the same are applicable, apply *mutatis mutandis* to prosecutions under this Act.

Regulations  
of Board  
for trans-  
portation  
and carriage  
of liquor.

4. The Board may make regulations and give directions permitting the transportation and carriage of liquor over any such highway, street, road bridge, lane or other public place under such terms and conditions as the Board may impose, from any place where liquor may be lawfully manufactured or stored to a railway station, freight shed, dock or other place from which the same is to be shipped for any lawful purpose.

Exceptions.

5. Nothing in this Act contained shall prevent or apply to:—

(a) the sale, carriage, transportation or delivery of liquor under the order or direction, or with the permission of the Board;

(b) the carrying, transporting, receiving or taking delivery of liquor which may be lawfully sold, carried, transported or delivered under section 43 of *The Ontario Temperance Act* or under clause a of section 30 of *The Ontario Temperance Amendment Act, 1918*;

(c) the rights and powers of the Board to purchase, import, sell, supply or deliver liquor for any purpose permitted by *The Ontario Temperance Act*.

Commence-  
ment of Act.

6. This Act shall come into force on the day upon which it receives the Royal Assent.

6th June, 1922.

SCHEDULE "A."

PROVINCE OF ONTARIO, 1916-17.

Vendor's License.

(Sec. 33.)

*A.B.*

is hereby authorized during the period commencing on the day of 191 , and ending on the day of 191 , subject to the provisions of *The Ontario Temperance Act*, to sell in his warehouse, situate at , alcohol and other liquors to such persons as are entitled to purchase the same under the provisions of said Act not exceeding the quantities therein mentioned.

Dated this day of , 192 .

.....

*Provincial Secretary.*

Countersigned,

.....

*Chairman of the Board of License Commissioners for Ontario.*



SCHEDULE "B."

PROVINCE OF ONTARIO.

*The Ontario Temperance Act.*

(Sec. 14.)

To the Board of License Commissioners for Ontario.

I,

hereby apply for the issue to me of a Vendor's License under *The Ontario Temperance Act* for the current license year. I carry on business at , and am the





in the Province of Ontario, and of the  
of in the Province of Ontario,  
do severally make oath and say:

1. That we know, the applicant  
named in the within application.

2. The statements contained in the said application are true.

The above named  
and were severally  
sworn before me at  
in the Province of Ontario,  
this day of  
A.D. 192

---

SCHEDULE "C."

Province of Ontario.

THE ONTARIO TEMPERANCE ACT.

(Sec. 15.)

Bond of Vendor.

Know all men by these presents that we,  
of and  
of and  
of are held and firmly bound  
unto His Majesty the King, his heirs and successors, as follows,  
that is to say the said in the  
sum of five hundred dollars of good and lawful money of Canada,  
the said in the sum of two  
hundred and fifty dollars of like good and lawful money, and the  
said in the sum of two  
hundred and fifty dollars of like good and lawful money, for pay-  
ment of which well and truly to be made we bind ourselves and each  
of us, our heirs, executors and administrators firmly by these  
presents.

Sealed with our seals and dated this  
 day of \_\_\_\_\_ A.D. 192

Whereas the above bounden \_\_\_\_\_ has  
 applied for and is about to obtain a Vendor's License authorizing  
 him during the period commencing on the  
 day of \_\_\_\_\_ and ending  
 on the \_\_\_\_\_ day of \_\_\_\_\_ to sell  
 subject to the provisions of the said *The Ontario Temperance Act*  
 in the warehouse or store defined as follows: \_\_\_\_\_ alcohol  
 and other liquor.

Now, therefore, the condition of this obligation is such that if  
 the said \_\_\_\_\_ shall at all times during  
 the continuance of the said license well and faithfully keep and  
 observe all the regulations and requirements of the said *The Ontario  
 Temperance Act* in respect of the said Vendor's License so to be  
 issued to him, and shall not violate any of the provisions of the  
 said Act, and shall pay all fines and penalties which he may be  
 condemned to pay for any offence against any statute or other  
 provision having the force of law now or hereafter to be in force  
 relative to such Vendor's License, and do and perform and observe  
 all rules and regulations that are or may be established by com-  
 petent authority on such behalf, then this obligation shall be void,  
 otherwise it shall remain in full force, virtue and effect.

Signed, sealed and delivered  
 in the presence of

SCHEDULE "D."

Ontario:  
 To Wit:

I \_\_\_\_\_ of the \_\_\_\_\_ of  
 in the Province of Ontario, make oath and say:

That I reside at the \_\_\_\_\_ of \_\_\_\_\_ in the Province of

Ontario, and am engaged in (state occupation).

That \_\_\_\_\_ of \_\_\_\_\_ is required by me to be used for \_\_\_\_\_ purposes, and for no other purpose; that such liquor is not intended to be used as a beverage or mixed with any other liquor for use as a beverage nor to sell nor to give away.

That this application is made to vendor, for said liquor.

Sworn before me at  
in the Province of Ontario,  
this \_\_\_\_\_ day of  
A.D. 192 \_\_\_\_\_

A Commissioner in B.R.

---

### SCHEDULE "E."

Ontario:

To Wit:

I, \_\_\_\_\_, of the \_\_\_\_\_, of \_\_\_\_\_, in the Province of Ontario, minister of the Gospel and now being \_\_\_\_\_ of the \_\_\_\_\_ Church at \_\_\_\_\_, hereby request you to sell me for sacramental purposes only \_\_\_\_\_ of \_\_\_\_\_ wine.

Dated at \_\_\_\_\_, this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 192 \_\_\_\_\_

To \_\_\_\_\_ A.B.

Druggist.

SCHEDULE "E1."

PRESCRIPTION FOR LIQUOR BY MEDICAL PRACTITIONER.

---

GENERAL FORM.

(Under Section 51)

Date.....19 .

To

*Druggist.*

Required for

(Give name, address and occupation

of person for whom liquor is required.)

ounces of Liquor for Medical Purposes only, for the patient above named.

(Doctor's signature in full.)

NOTES:

(a) Not more than 6 ounces can be prescribed for internal use.

(b) Where alcohol is required for bathing a patient, one pint may be ordered.

(c) This prescription can only be filled once, and must be filed by the druggist, to be hereafter inspected if required.

(d) The person to whom the above liquor is delivered by the druggist must sign for the same on this prescription.

(e) *This* prescription may be filled by any duly qualified and registered druggist.

Signature of person to whom liquor was delivered.

SCHEDULE "F."

GENERAL FORM OF INFORMATION.

ONTARIO, } THE INFORMATION of A.B., of the township of  
 County of York, } York, in the County of York, License In-  
 To Wit: } spector, laid before me, C.D., Police Magis-  
 trate, in and for the City of Toronto [*or one of His Majesty's*  
 Justices of the Peace, in and for the County of York], the  
 day of \_\_\_\_\_, A.D. 19 .

The said informant says, he is informed and believes that X.Y.,  
 on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19 , at the Township  
 of York, in the County of York, unlawfully did sell liquor in con-  
 travention of *The Ontario Temperance Act*.

Laid and signed before me the }  
 day and year, and at the }  
 place first above mentioned. }  
 C.D.

P.M. or J.P.:

A.B.

SCHEDULE "G."

AFFIDAVIT UNDER SECTION 26 (3).

ONTARIO,  
 To Wit:

I, \_\_\_\_\_, of the \_\_\_\_\_,  
 of \_\_\_\_\_, make oath and say:

That I have a permanent place of residence at  
 No. \_\_\_\_\_ Street in the \_\_\_\_\_  
 of \_\_\_\_\_, in the County of \_\_\_\_\_  
 of \_\_\_\_\_, make oath and say:

That I require a small quantity of tincture or essence of ginger

for use in my household. That no part of the said ginger will be used for beverage purposes, or for any other purpose than domestic use, as above set out.

Sworn before me at  
in the  
County of  
this        day of  
192 .

1918, c. 40, s. 26 (3).

---

#### FORMS DESCRIBING OFFENCES.

1. *Allowing liquor to be illegally consumed on premises under license.*

“That X.Y., having a vendor’s license at \_\_\_\_\_, unlawfully did allow liquor to be consumed within his warehouse (or shop, or within a building which forms part of, or is appurtenant to or which communicates by an entrance with a warehouse or shop, or premises), in contravention of *The Ontario Temperance Act.*”

2. *Illegal sale by druggists.*

“That X.Y., being a druggist on \_\_\_\_\_ at \_\_\_\_\_, did unlawfully sell liquor for other than strictly medicinal purposes, (or without a certificate from any legally qualified medical practitioner, or sell liquor without recording the same), in contravention of *The Ontario Temperance Act.*”

3. *Harbouring constables on duty.*

“That X.Y., being a licensed vendor at \_\_\_\_\_, on \_\_\_\_\_, unlawfully and knowingly did harbour [or entertain or suffer to abide and remain on his premises] O.P., a constable belonging to a police force.”

4. *Compromising or compounding a prosecution.*

"That X.Y., having violated a provision of *The Ontario Temperance Act*, on \_\_\_\_\_ at \_\_\_\_\_, unlawfully did compromise (or compound, or settle, or offer, or attempt to compromise, compound, or settle), the offence with A.B., with the view of preventing any complaint being made in respect thereof [or with the view of getting rid of, or of stopping, or of having the complaint made in respect thereof dismissed, as the case may be]."

5. *Being concerned in compromising a prosecution.*

"That X.Y., on \_\_\_\_\_, at \_\_\_\_\_, unlawfully was concerned in [or a party to] a compromise [or a composition, or a settlement] of an offence committed by O.P., against a provision of *The Ontario Temperance Act*."

6. *Tampering with a witness.*

"That X.Y., on a certain prosecution under *The Ontario Temperance Act*, on \_\_\_\_\_, at \_\_\_\_\_, unlawfully did tamper with O.P., a witness in such prosecution, before [or after] he was summoned [or appeared] as a witness on a trial [or proceeding] under the said Act, [or unlawfully did induce, or attempt to induce, O.P., a witness in such prosecution, to absent himself, or to swear falsely]."

7. *Refusing to admit policeman.*

"That X.Y., on the \_\_\_\_\_, at \_\_\_\_\_, being in (or having charge of) the premises of O.P., being a place where liquor is reputed to be sold unlawfully did refuse (or fail) to admit [or did obstruct or attempt to obstruct] E.F., an officer demanding to enter in the execution of his duty [or did obstruct or attempt to obstruct E.F., an officer making searches in said premises, and in the premises connected with such place]."

8. *Officer refusing to prosecute.*

"That X.Y., being a police officer [or constable, or Inspector of Licenses in and for the \_\_\_\_\_, in the County of \_\_\_\_\_], knowing that O.P. had on \_\_\_\_\_, at \_\_\_\_\_, committed an offence against the provisions of *The Ontario Temperance Act*, unlawfully and wilfully did, and still does, neglect to prosecute the said O.P. for his said offence."

## FORM OF INFORMATION FOR SECOND OR SUBSEQUENT OFFENCE.

ONTARIO, } THE INFORMATION of A.B., of, etc., License In-  
 County of York, } spector, laid before me, C.D., Police Magis-  
 To Wit: } trate in and for the                    of  
 [or one of His Majesty's Justices of the Peace in and for the County  
 of                    ], the                    day of                    A.D. 19                    .

The said informant says he is informed and believes that X.Y.,  
 on                    , at                    , [describe last offence].

And further that the said X.Y., was previously, to wit: on the  
                   day of                    A.D. 19                    , at the City of Toronto,  
 before C.D., Police Magistrate in and for the                    of                    [or  
 at the                    of                    , in the County of York, before E.F. and  
 G.H., two of His Majesty's Justices of the Peace for the County  
 of                    ], duly convicted of having, on the                    day of                    ,  
 19                    , at the                    of                    , in the County of                    , unlawfully  
 sold liquor in contravention of *The Ontario Temperance Act* [or as  
*the case may be.*]

And further, that the said X.Y. was previously, to wit: On the  
                   day of                    A.D. 19                    , at the                    of                     
                   , in the County of                    , before, etc. [as in preceding  
*paragraph*], again duly convicted of having, on the                    day of                     
                   , A.D. 19                    , at the                    of                    , in the  
 County of                    , unlawfully allowed liquor to be  
 consumed within a building which communicates by entrance with  
 his shop.

And further, that the said X.Y. was previously, to wit: on the  
                   day of                    , A.D.                    , at the                    town of                    ,  
 in the County of                    , before, etc. (*see above*), again duly  
 convicted of having on the                    day of                    , A.D.  
 at the                    of                    , in the County of                    (being in  
 charge of the premises of O.P., a place where liquor was reputed to  
 be sold), unlawfully failed to admit E.F., an officer demanding to  
 enter in the execution of his duty.

And the informant says the offence hereinbefore firstly charged  
 against the said X.Y. is his                    offence against *The  
 Ontario Temperance Act.*



Laid and signed before me the day  
and year, and at the place first above  
mentioned.

C.D.,  
J.P.

A.B.

SUMMONS TO WITNESS.

ONTARIO,  
County of York,  
To Wit:

To J.K., of the City of Toronto, in the County  
of York.

Whereas, information has been laid before me, C.D., one of His Majesty's Justices of the Peace in and for the of (or Police Magistrate for the of ), that X.Y., being a druggist, on the day of , 19 , at the Township of , in the County of , unlawfully did sell liquor for other than strictly medicinal purposes, and it has been made to appear to me that you are likely to give material evidence on behalf of the prosecutor in this behalf.

These are to require you, under pain of imprisonment in the Common Gaol, personally to be and appear on Tuesday, the day of , A.D. 19 , at ten o'clock in the forenoon, at the , in the of , before me or such Justice or Justices of the Peace as may then be there, to testify what you shall know in the premises [and also to bring with you and there and then produce all and every invoices, cash books, day books, or ledgers and receipts, promissory notes, or other security relating to the purchase or sale of liquor by the said X.Y., and all other books and papers, accounts, deeds, and other documents in your possession, custody or control, relating to any matter connected with the said prosecution].

Given under my hand and seal this day of  
A.D. 19 , at the of , in the County of

C.D.,

J.P. (L.S.)

## FORM OF CONVICTION FOR FIRST OFFENCE.

ONTARIO, } BE IT REMEMBERED that on the            day  
 County of York, } of            A.D. 19    , at the            of  
 To Wit:            }            , in the said County of York, X.Y.

was convicted before me, *C.D.*, Police Magistrate in and for the  
 of            (*or before us, E.F. and G.H.*, two of His Majesty's  
 Justices of the Peace in and for the said County), for that he, the  
 said X.Y., on the            day of            , A.D. 19    , at the  
 of            , in the said County, in his premises  
 unlawfully did sell liquor in contravention of *The Ontario Temperance Act, A.B.*, being the informant, and I (*or we*) adjudge the  
 said X.Y., for his said offence, to forfeit and pay the sum of  
 \$            , to be paid and applied according to law, and also to pay to  
 the said *A.B.* the sum of \$            for his costs in this behalf, and if  
 the said several sums be not paid forthwith, then I (*or we*) order  
 that said sums be levied by distress and sale of the goods and  
 chattels of the said X.Y., and in default of sufficient distress in  
 that behalf [*or if distress is not ordered omit the foregoing words  
 and proceed*] I (*or we*) adjudge the said X.Y. to be imprisoned in  
 the Common Gaol for the County of            , at  
 in the said County, and there to be kept for the space of  
 unless the said sums and the costs and charges of conveying the  
 said X.Y. to the said Common Gaol shall be sooner paid.

Given under my hand and seal [*or our hands and seals*] the day  
 and year first above mentioned, at the            of            , in the  
 County aforesaid.

*C.D.*,            (L.S.)

*Police Magistrate.*

*or E.F.*,

*J.P.*            (L.S.)

*G.H.*,

*J.P.*            (L.S.)

## FORM OF CONVICTION FOR A SECOND OR SUBSEQUENT OFFENCE.

ONTARIO, } BE IT REMEMBERED that on the            day  
 County of York, } of            A.D. 19   , in the            of  
 To Wit:        }           , in the said County, X.Y., is con-  
 victed before the undersigned C.D., Police Magistrate in and for  
 the            of           , in the said County [or C.D. and E.F., two  
 of His Majesty's Justices of the Peace in and for said County],  
 for that he, the said X.Y., on the            day of           ,  
 A.D. 19   , at the            of            [or            of           ], in  
 said County (*as the case may be*), having violated a provision of  
*The Ontario Temperance Act*, unlawfully did attempt to settle the  
 offence with A.B., with the view of having the complaint made in  
 respect thereof dismissed. And it appearing to me (*or us*) that the  
 said X.Y. was previously, to wit; on the            day of  
 A.D. 19   , at the City of Toronto, before, etc., duly convicted of  
 having on the            day of           , A.D. 19   , at the  
                   of           , unlawfully sold liquor. And it also  
 appearing to me (*or us*) that the said X.Y. was previously to wit:  
 on the            day of            A.D. 19   , at the  
                   of           , before           , etc. (*see above*)  
 again duly convicted of having, on the            day of  
 A.D. 19   , at the            of            in the said  
                   of           , unlawfully allowed gambling  
 (*or as the case might be*).

I [*or we*] adjudged the offence of said X.Y., hereinbefore firstly  
 mentioned to be his            offence against *The Ontario Temperance*  
*Act* (A.B. being the informant), and I (*or we*) adjudged the said  
 X.Y., for his said            offence, to be imprisoned in the Common  
 Gaol of the said            of           , at           , in the said County  
 of           , there to be kept without hard labour [*or with hard*  
*labour, as the case may be*] for the space of three calendar months  
 (*or as the case may be*).

Given under my hand and seal [*or our hands and seals*] the day  
 and year first above mentioned, at Toronto, in the County of York.

C.D. (L.S.)

*or*

C.D. (L.S.)

E.F. (L.S.)

WARRANT OF COMMITMENT FOR A FIRST OFFENCE WHERE A PENALTY  
IS IMPOSED.

ONTARIO, }  
County of York, } To ALL or any of the Constables or other Peace  
To Wit: } Officers in the said County of \_\_\_\_\_,  
of the said County at \_\_\_\_\_, and to the Keeper of the Common Gaol  
in the County of \_\_\_\_\_,

Whereas X.Y., late of the \_\_\_\_\_ of \_\_\_\_\_, in the said County, was on this day convicted before the undersigned, C.D., Police Magistrate in and for the \_\_\_\_\_ of \_\_\_\_\_ [or C.D. and E.F.] two of His Majesty's Justices of the Peace in and for the \_\_\_\_\_ of \_\_\_\_\_ or County of \_\_\_\_\_ (as the case may be), for that he, the said X.Y., on \_\_\_\_\_, at \_\_\_\_\_, unlawfully did sell liquor in contravention of *The Ontario Temperance Act (state offence as in the conviction)*, (A.B. being the informant), and it was thereby adjudged that the said X.Y., for his offence, should forfeit and pay the sum of \_\_\_\_\_ (as in conviction), and should pay to the said A.B. the sum of \_\_\_\_\_ for his costs in that behalf.

And it was thereby further adjudged that if the said several sums should not be paid forthwith, the said X.Y. should be imprisoned in the Common Gaol of the said County at \_\_\_\_\_, in the said County of \_\_\_\_\_, there to be kept at hard labour (or as the case may be) for the space of \_\_\_\_\_, unless the said several sums and the costs and charges of conveying the said X.Y. to the said Common Gaol should be sooner paid.

And whereas the said X.Y. has not paid the said several sums, or any part thereof, although the time for payment thereof has elapsed.

[If a distress warrant issued and was returned, no goods, or not sufficient goods, say, "And whereas, afterwards on the day of \_\_\_\_\_, A.D. 19 \_\_\_\_\_, I, the said Police Magistrate (or we, the said Justices), issued a warrant to the said Constables or Peace Officers, or any of them, to levy the said several sums of \_\_\_\_\_ and \_\_\_\_\_ by distress and sale of the goods and chattels of the said X.Y.;

"And whereas it appears to me (or us) as well, by the return of

the said warrant of distress by the Constable who had the execution of the same or otherwise, that the said Constable has made diligent search for the goods and chattels of the said X.Y., but that no sufficient distress whereon to levy the said sums could be found."

These are, therefore, to command you, the said Constables or Peace Officers, or any one of you, to take the said X.Y., and him safely convey to the Common Gaol as aforesaid, at \_\_\_\_\_, in the County of \_\_\_\_\_, and there deliver him to the Keeper thereof, together with this precept.

And I (*or we*) do hereby command you, the said Keeper of the said Common Gaol, to receive the said X.Y. into your custody in the said Common Gaol, there to imprison him and keep him for the space of \_\_\_\_\_ (*without hard labour or with hard labour, as the case may be*) unless the said several sums and all costs and charges of the said distress, amounting to the sum of \_\_\_\_\_ and of the commitment and conveying of the said X.Y. to the said Common Gaol, amounting to the further sum of \_\_\_\_\_, shall be sooner paid unto you, the said Keeper, and for so doing this shall be your sufficient warrant.

Given under my hand and seal (*or our hands and seals*) this \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the said County of \_\_\_\_\_

C.D. (L.S.)

*or*

C.D. (L.S.)

G.H. (L.S.)

WARRANT OF COMMITMENT FOR SECOND (*or* SUBSEQUENT) OFFENCE,  
WHERE PUNISHMENT IS BY IMPRISONMENT ONLY.

ONTARIO, County of York, To Wit:	}	TO ALL of any of the Constables or other Peace Officers in the said County of _____ and to the Keeper of the Common Gaol of the said County at _____, in the County of _____
--	---	---

Whereas X.Y., late of the \_\_\_\_\_ of \_\_\_\_\_, in the said County, was on this day convicted before the undersigned, C.D., etc., (or C.D. and E.F., etc., as in preceding form); for that he, the said X.Y. on \_\_\_\_\_ at \_\_\_\_\_ (state offence, with previous convictions as set forth in the conviction for the second or third offence, or as the case may be, and then proceed thus): "And it was thereby adjudged that the offences of the said X.Y., hereinbefore firstly mentioned, was his second (or third) offence against *The Ontario Temperance Act* (A.B. being the informant). And it was thereby further adjudged that the said X.Y., for his said second (or third) offence should be imprisoned in the Common Gaol of the said County of \_\_\_\_\_, at \_\_\_\_\_, in the said County of \_\_\_\_\_, and there to be kept without hard labour (or with hard labour, as the case may be) for the space of \_\_\_\_\_ calendar months.

These are therefore, to command you, the said Constables, or any one of you, to take the said X.Y., and him safely convey to the said Common Gaol at \_\_\_\_\_, aforesaid, and there deliver him to the Keeper thereof, with this precept. And I (or we) do hereby command you, the said Keeper of the said Common Gaol to receive the said X.Y. into your custody in the said Common Gaol, there to imprison him and keep him without hard labour (or with hard labour, as the case may be) for the space of \_\_\_\_\_ calendar months.

Given under my hand and seal (or our hands and seals), this \_\_\_\_\_ day of \_\_\_\_\_, A.D. 19\_\_\_\_, at \_\_\_\_\_, in the said County of \_\_\_\_\_

C.D. (L.S.)

or

C.D. (L.S.)

E.F. (L.S.)

---

FORM OF DECLARATION OF FORFEITURE AND OF ORDER TO DESTROY LIQUOR SEIZED.

*If a conviction, after adjudging penalty or imprisonment, as in form 7, proceed thus:*

"And I [or we] declare the said liquor and vessels in which the same is kept, to wit: two barrels containing beer, three jars containing whiskey, two bottles containing gin, four kegs containing lager beer, and five bottles containing native wine [or as the case may be], to be forfeited to His Majesty, and I [or we] do hereby order and direct that *T.D.*, License Inspector of the do forthwith destroy the said liquor and vessels." [Where the quantity is large add after the words "His Majesty" the words "to be dealt with as the Minister may direct."]

Given under my hand and seal the day and year above mentioned, at, etc.

*If by a separate or subsequent Order:*

"COUNTY OF YORK, } We, *E.F.* and *G.H.*, two of His Majesty's  
TO WIT: } Justices of the Peace for the County of

[or *C.P.*, Police Magistrate of the of ],  
having on the day of , 19 , at the Township of  
, in the said County, duly convicted *X.Y.* of having unlawfully kept liquor for sale in contravention of *The Ontario Temperance Act*, do hereby declare the said liquor and vessels in which the same is kept, to wit: [describe the same as above], to be forfeited to His Majesty, and we [or I] do hereby order and direct that *J.P.W.*, License Inspector of the do forthwith destroy the said liquor and vessels." [Where the quantity is large add after the words "His Majesty" the words "to be dealt with as the Minister may direct."]

Given under our [or my] hands and seals, this day  
of , A.D. 19 , at the Township of Scarborough, in the  
said County.

*E.F.* (L.S.)

or

*G.H.* (L.S.)

*C.D.* (L.S.)

## (DOMINION)

## 10 GEORGE V, CHAP. 8.

## An Act to amend the Canada Temperance Act.

[Assented to 10th November, 1919.]

**H**IS MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

- R.S., c. 152;  
1908, c. 71;  
1910, c. 58;  
1914, c. 53;  
1916, c. 14;  
1917, c. 30;
1. The *Canada Temperance Act*, chapter one hundred and fifty-two of the Revised Statutes of Canada, 1906, is amended by adding the following Part immediately after section one hundred and fifty-one thereof:—

## “PART IV.

## “IMPORTATION AND MANUFACTURE OF INTOXICATING LIQUOR.

Upon receipt of resolution of Legislative Assembly or of Yukon Council requesting vote on prohibition of importation of liquors, the Governor in Council may issue proclamation.

“152. Subject to subsection two of section one hundred and fifty-six, upon the receipt by the Secretary of State of Canada of a duly certified copy of a resolution passed by the Legislative Assembly of any province (or, in the case of the Yukon Territory, of the Council of the Yukon Territory) in which there is at the time in force a law prohibiting the sale of intoxicating liquor for beverage purposes, requesting that the votes of the electors in all the electoral districts of the province may be taken for or against the following prohibition, that is to say,—

Contents of proclamation.

“That the importation and the bringing of intoxicating liquors into such province may be forbidden;

the Governor in Council may issue a proclamation in which shall be set forth:—

Day of poll.

“(a) the day on which the poll for taking the votes of



the electors for and against the prohibition will be held;

- “(b) that such vote will be taken by ballot between the hours of nine o’clock in the forenoon and five o’clock in the afternoon of that day; Hours.
- “(c) the names of the persons appointed as returning officers for the several electoral districts for the purpose of taking on that day the votes of the electors for and against the said prohibition with respect to which a vote has been requested, and of afterwards summing up the same and making a return of the result to the Governor in Council; Names of returning officers.
- “(d) the power of each returning officer to appoint a deputy returning officer at and for each polling place or station in the electoral district for which he is appointed; Appointment of deputies.
- “(e) the place where, and the day and the hour when, the returning officers will appoint persons to attend at the various polling stations, and at the final summing up of the votes on behalf of the persons interested in, and promoting or opposing respectively the adoption of, the prohibition; Appointment of representatives.
- “(f) the place where, and the day and hour when, the votes of the electors will be summed up, and the result of the polling declared by the returning officers; Date and place of final summing up.
- “(g) the day on which, in the event of the vote being in favour of the prohibition, such prohibition will go into force; Date when Prohibition will go into effect.
- “(h) any such further particulars with respect to the taking and summing up of the votes of the electors as the Governor in Council sees fit to insert therein. Further particulars.
- “152a. The said proclamation may be issued within three months, after the receipt by the Secretary of State of Date of issue of proclamation.

the copy of the resolutions referred to in the preceding section.

Proceedings thereafter to be same as are prescribed for bringing Part II of Canada Temperance Act into force. Returns to be made to Governor in Council, who shall declare prohibition in force if more than one-half of total vote is in favour.

“153. The proceedings after the issue of such proclamation shall be the same as are prescribed by this Act for bringing into force Part II of this Act, and the provisions of Part I of this Act shall, as far as applicable, *mutatis mutandis* apply thereto. Provided, however, that the returning officers shall make their returns to the Governor in Council of the total number of votes in favour of the prohibition and the total number against the same, and the Governor in Council shall by Order in Council declare the prohibition in force if more than one-half of the total number of votes cast in all the electoral districts are in favour of such prohibition.

If prohibition declared.

“154.—(1) If the prohibition is declared to be in force.—

No importation, etc., allowed.

“(a) no person shall import, send, take, or transport into such province any intoxicating liquor;

No sale or contract to sell liquor to be delivered in province.

“(b) no person shall, either directly or indirectly, manufacture or sell, or contract or agree to manufacture or sell, any intoxicating liquor to be unlawfully imported, sent, taken or transported into such province;

Transportation of liquor through province to be only by common carrier, and no package to be opened in transit.

“(c) the carriage or transportation of intoxicating liquor through such province shall only be by means of a common carrier by water or by railway and not otherwise, and during the time any intoxicating liquor is being so transported or carried no person shall open or break or allow to be opened or broken any package or vessel containing such intoxicating liquor, or drink or use or allow to be drunk or used any intoxicating liquor therefrom.

Penalties for violation.

“(2) Every person who violates any of the provisions of this section shall be guilty of an offence and shall be liable on summary conviction to a penalty, for the first offence, of not less than two hundred dollars and not more than one

thousand dollars, and, in default of payment, to imprisonment for any term not less than three months and not more than six months, and for each subsequent offence to imprisonment for any term not less than six months and not more than twelve months.

“(3) The burden of proving the right to import or manufacture intoxicating liquor, or cause intoxicating liquor to be imported or manufactured, or to sell, send, carry or deliver intoxicating liquor, or cause intoxicating liquor to be sold, sent, carried or delivered into any province where the same is prohibited shall be on the person accused.

Burden of proof on person accused.

“Provided, however, that the provisions of this section shall not apply or extend to the importation, manufacture, sending, taking, delivery, carriage or transportation into or within, or the sale or agreeing to sell for delivery in, any province in which the prohibition is in force, of any intoxicating liquor for sacramental or medicinal purposes or for manufacturing or commercial purposes, other than for the manufacture or use thereof as a beverage, or to any intoxicating liquor which under the laws of the Province or Territory in which the prohibition is in force, may be lawfully sold therein.

Not to apply to liquor for sacramental or medicinal purposes, or manufacturing or commercial purposes, or to liquor which may be lawfully sold in province.

“155. The provisions of Part III of this Act shall, as far as applicable, apply and extend to offences and prosecutions under this Part and to proceedings for the enforcement of this Part. (See page 107 of this consolidation.)

Part III, relating to offences, to apply.

“156.—(1) Upon the receipt by the Secretary of State of a duly certified copy of a resolution passed by the Legislative Assembly of any province (or, in the case of the Yukon Territory, of the Council of the Yukon Territory) requesting that the prohibition in force in such province may be revoked, a poll shall be held and a vote taken to decide whether such prohibition shall be revoked or not, and the provisions of this Part as to the proceedings to be taken for bringing the prohibition into force, and the provisions of Part I with respect to the revocation of an order in council bringing Part II of this Act into force, shall apply

Revocation of prohibition.

*mutatis mutandis*, and the proceedings shall be taken accordingly.

Three years  
between  
polls.

(2) No poll or voting, whether for bringing into force any prohibition or for the revocation of the same, shall, be held or had within three years of any previous poll or voting held or had under the provisions of this Part."

Forfeiture of  
liquor, etc.,  
seized under  
Act and not  
claimed, etc.

2.—(1) When any intoxicating liquor is seized and brought before any judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace or any magistrate having the power or authority of two or more justices of the peace, in pursuance of the provisions of this Act, and the consignor or consignee or owner thereof or person entitled thereto or claiming the same cannot be ascertained, and if no person establishes a claim to the possession of such intoxicating liquor within a period of fifteen days after the seizure thereof as aforesaid, or within such extended time as the judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace or magistrate having the power or authority of two or more justices of the peace, may allow, or as may otherwise be allowed by any competent tribunal, then the judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace or magistrate having the power or authority of two or more justices of the peace who issue the warrant in execution of which such intoxicating liquor was seized, or, in the case of the death, absence or inability to act of such judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace or magistrate having the power or authority of two or more justices of the peace, any other judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace or magistrate having the power or authority of two or more justices of the peace, may adjudge and declare such intoxicating liquor, together with all kegs, barrels, cases, boxes, bottles, packages, containers and other receptacles of any kind whatever found containing the same, to be forfeited to the Crown.

(2) As soon as any intoxicating liquor and the receptacles containing the same are forfeited to the Crown, the judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace or magistrate having the power or authority of two or more justices of the peace by whom such forfeiture is adjudged and declared shall immediately transmit to the Minister of Customs and Inland Revenue a notice in writing specifying the quantities and descriptions of the intoxicating liquor so forfeited, and shall order that such intoxicating liquor shall immediately be deposited in a Customs Bonding Warehouse within the Province wherein such intoxicating liquor is forfeited as aforesaid, to be disposed of as the Minister of Customs and Inland Revenue may direct.

Disposal of  
forfeited  
liquor, etc.

NOTICE.—Pursuant to section 72, subsection 5, of The Dominion Elections Act, as modified under section 101 of that Act on the 7th of March, 1921, notice is hereby given that upon a question submitted under the Canada Temperance Act on the 18th of April, 1921, in the Province of Ontario, as follows: "Shall the importation and the bringing of intoxicating liquors into the province be forbidden?" the total number of votes cast in the affirmative was 540,773, and the total number of votes cast in the negative was 373,938" (Majority in favor of prohibition 166,835).

Canada Gazette, May 28th, 1921.

## (DOMINION)

11-12 GEORGE V.

*Chapter 20.*

R.S., c. 152;  
 1908, c. 71;  
 1910, c. 58;  
 1914, c. 53;  
 1916, c. 14;  
 1917, c. 30;  
 1919,  
 (2 Sess.) c. 8

An Act with regard to certain Proceedings under Part IV  
 of the Canada Temperance Act.

(Assented to 4th June, 1921.)

**H**IS MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Proclamation valid if it states prohibition shall go into force on day and date declared by Order in Council.

1. No proclamation heretofore or hereafter issued under Part IV of the *Canada Temperance Act*, as enacted by chapter eight of the statutes of 1919, second session, shall be deemed to be void, irregular, defective or insufficient for the purposes intended merely because it does not set forth the day on which, in the event of the vote being in favour of the prohibition, such prohibition will go into force, provided it does state that such prohibition shall go into force on such day and date as shall by Order in Council under section one hundred and nine of the *Canada Temperance Act* be declared.

Order in Council not invalid by reason of errors in proclamation or other proceedings unless court holds result materially affected.

2. No Order of the Governor in Council declaring prohibition in force in any province, whether heretofore passed or hereafter to be passed, shall be or be deemed to have been ineffective, inoperative or insufficient to bring prohibition into force at the time thereby declared by reason of any error, defect or omission in the proclamation or other proceedings preliminary to the vote of the electors, or in the taking, polling, counting or return of the vote or in any step or proceeding precedent to the said Order, unless it appear to the court or judge before whom the prohibition is in question that the result of the vote was thereby materially affected.

Court may make order as to costs.

3. Any court in which the proceedings are pending at the time of the coming into force of this Act in which the validity of any proclamation referred to in section one hereof is questioned shall have discretion to make such order as it may see fit with regard to the costs of the proceedings having in view the provisions of this Act.

(DOMINION)

P. C. 2115.

AT THE GOVERNMENT HOUSE AT OTTAWA

SATURDAY, the 18th day of JUNE, 1921.

PRESENT:

HIS EXCELLENCY

THE GOVERNOR GENERAL IN COUNCIL:

WHEREAS by proclamation issued under Part IV of the Canada Temperance Act on the 4th day of June, 1920, a vote of the electors of the Province of Ontario was directed to be taken for and against the prohibition the said proclamation specified, and the said vote was taken accordingly on the 18th day of April, 1921;

AND WHEREAS the Chief Electoral Officer, pursuant to subsection 5 of section 72 of the Dominion Elections Act, as modified pursuant to section 101 of the said Act by notice published in the Canada Gazette on the 12th day of March, 1921, made a statement of the number of votes cast in the affirmative and the negative respectively in each electoral district and of the total number of votes cast in each sense in the said Province, which said statement was published in the Canada Gazette on the 28th day of May, 1921;

AND WHEREAS it appears from the said statement that the total number of votes cast in the affirmative was 540,773, and the total number of votes cast in the negative was 373,938;

AND WHEREAS it was set out in the proclamation before mentioned that in the event of the votes of the electors of the said Province being in favour of the said prohibition such prohibition would go into force on such day and date as should by Order in Council under section 109 of the Canada Temperance Act be declared;

NOW THEREFORE His Excellency, the Governor General

in Council, has been pleased to direct and hereby directs that the prohibition which, under the provisions of Part IV of the Canada Temperance Act is by Order in Council to be declared in force, shall, in respect to the Province of Ontario, go into force by virtue of this Order on the thirty-first day next following the day of the date thereof, and has been pleased to declare and it is hereby declared that the said prohibition be thereafter in force accordingly.

(Sgd.) RODOLPHE BOUDREAU,  
Clerk of the Privy Council.



## (DOMINION)

*Chapter 152.*

An Act respecting the Traffic in intoxicating Liquors.

## SHORT TITLE.

1. This Act may be cited as the Canada Temperance Act, R. S., c. 106, S. 1.

2. In this Act, unless the context otherwise requires,—
- |  |                             |
|--|-----------------------------|
|  | Interpre-<br>tation.        |
| (a) 'intoxicating liquors' includes every spirituous or malt liquor, and every wine, and any and every combination of liquors or drinks that is intoxicating, and any mixed liquor capable of being used as a beverage, and part of which is spirituous or otherwise intoxicating; | "Intoxicat-<br>in liquors." |
| (b) 'electors' means persons qualified and competent to vote at an election of a member of the House of Commons in the county or city in respect of which the expression is used;  | "Electors."                 |
| (c) 'form' means a form in the schedule of this Act;   | "Form."                     |
| (d) 'county' includes every town, township, parish and other division or municipality, except a city, within the territorial limits of the county, and also a union of counties united for municipal purposes;   | "County."                   |
| (e) as respects the province of Ontario, or any other province in which provisional temporary judicial districts exist, 'county' includes such provisional or temporary judicial districts;  | "County" in<br>Ontario.     |

## DIVISION OF ACT.

4. This Act is divided into three Parts. Part I. relates to proceedings for bringing Part II. into force. Part II. relates

Into 3 parts.

to the prohibition of traffic in intoxicating liquors. Part III. relates to penalties and prosecutions for offences against Part II. R. S., c. 106, s. 3.

NOTE.—*This part is inserted for reference only.*

## PART II.

### TRAFFIC IN INTOXICATING LIQUOR.

#### Prohibition.

Prohibition  
of dealings  
with liquor  
where  
Part II. is  
in force.

117. From the day on which this Part comes into force and takes effect in any county or city, and for so long thereafter as, and while the same continues or is in force therein, no person shall, except as in this Part specially provided, by himself, his clerk, servant or agent,—

Offering  
for sale.

(a) expose or keep for sale, within such county or city, any intoxicating liquor; or,

Sale, barter,  
gift.

(b) directly or indirectly on any pretense or upon any device, within any such county or city, sell or barter, or, in consideration of the purchase of any other property, give to any other person any intoxicating liquor; or,

Sending and  
bringing.

(c) send, ship, bring or carry or cause to be sent, shipped, brought, or carried to or into any such county or city, any intoxicating liquor; or,

Delivery

(d) deliver to any consignee or other person, or store, warehouse, or keep for delivery, any intoxicating liquor so sent, shipped, brought or carried.

Exceptions.

2. Paragraphs (c) and (d) of subsection 1 of this section shall not apply to any intoxicating liquor sent, shipped,

brought or carried to any person or persons for his or their personal or family use, except it be so sent, shipped, brought or carried to be paid for in such county or city to the person delivering the same, his clerk, servant, or agent, or his master or principal, if the person delivering it is himself a servant or agent.

3. No act done in violation of the provisions of this section shall be rendered lawful by reason of,—

Certain licenses not to avail as against provisions of this Act.

- (a) any license issued to any distiller or brewer; or
- (b) any license for retailing on board any steamboat or other vessel, brandy, rum, whiskey, or other spirituous liquors, wine, ale, beer, porter, cider, or other vinous or fermented liquors; or,
- (c) any license for retailing on board any steamboat or other vessel, wine, ale, beer, porter, cider or other vinous or fermented liquors, but not brandy, rum, whiskey or other spirituous liquors; or,
- (d) any license or other description whatsoever. 7-8 Edw. VII. c. 71, s. 1.

118. The sale of wine for exclusively sacramental purposes may, on the certificate of a clergyman affirming that the wine is required for sacramental purposes, be made by druggists and vendors thereto specially licensed by the lieutenant governor in each province; but the number of such licensed druggists and vendors shall not exceed one in each township or parish, or two in each town, or one for every four thousand inhabitants in each city. R.S. c. 106, s. 99.

Sale for sacramental purposes.

119. The sale of intoxicating liquor for exclusively medicinal purposes, or for bona fide use in some art, trade or manufacture, may be made by any person duly authorized to sell the same; but such intoxicating liquor when sold for medicinal purposes, shall be removed from the premises, and such sale shall be made only on the certificate of a legally qualified physician having no interest in the sale, affirming

Sale for purposes of medicine, art, trade, or manufacture.

that such liquor has been prescribed for the person named therein.

Certificate to be produced.

2. When such sale of intoxicating liquor is for its use in some art, trade or manufacture, the same shall be made only on a certificate, signed by two justices of the peace, of the good faith of the application, accompanied by the affirmation of the applicant, that the liquor is to be used only for the particular purposes set forth in the affirmation.

Record and annual return to collector.

3. Such vendor shall file the certificates and keep a register of all such sales, indicating the name of the purchaser and the quantity sold, and shall make an annual return of all such sales, on the thirty-first day of December in every year, to the collector of Inland Revenue within whose revenue division the county or city is situate. 51 V., c. 34, s. 5.

Sale in wholesale quantities and to certain persons only.

120. Any producer of cider in the county or city may, at his premises, and any licensed distiller or brewer, having his distillery or brewery within any county or city, may at such distillery or brewery, expose and keep for sale such liquor as he manufactures thereat, and no other; and may sell the same thereat, but only in quantities not less than ten gallons, or in the case of ale or beer, not less than eight gallons at any one time, and only to druggists and vendors licensed as aforesaid, or to such person as he has good reason to believe will forthwith carry the same beyond the limits of the county or city, and of any adjoining county or city in which this Part is then in force and will not carry or send the same or cause the same to be sent or carried into any city or county in which the same is to be dealt with in violation of any provincial law in force in such city or county, to be wholly removed or taken away in quantities not less than ten gallons, or in the case of ale or beer, not less than eight gallons at a time. 1916, c. 14.

Sale by vine-growing companies.

121. Any incorporated company authorized by law to carry on the business of cultivating and growing vines and of making and selling wine and other liquors produced from grapes, having their manufactory within such county or city, may thereat expose and keep for sale such liquor as they manufacture thereat and no other; and may sell the same

thereat, but only in quantities not less than ten gallons at any one time, and only to druggists and vendors licensed as aforesaid, or to such persons as they have good reason to believe will forthwith carry the same beyond the limits of the county or city and of any adjoining county or city in which this Part is then in force, and will not carry or send the same or cause the same to be sent or carried into any city or county in which the same is to be dealt with in violation of any provincial law in force in such city or county, to be wholly removed and taken away in quantities not less than ten gallons at a time. 1916, c. 14.

122. Manufacturers of pure native wines made from grapes grown and produced by them in Canada may, when authorized so to do, by license from the municipal, or other authority having jurisdiction where such manufacture is carried on, sell such wines at the place of manufacture in quantities of not less than ten gallons at one time, except when sold for sacramental or medical purposes, when any number of gallons, from one to ten, may be sold. R.S., c. 106, s. 99.

Sales by manufacturers of pure native wines.

123. Any merchant or trader, exclusively in wholesale trade and duly licensed to sell liquor by wholesale, having his store or place for sale of goods within such county or city, may thereat keep for sale and sell intoxicating liquor, but only in quantities not less than ten gallons at any one time, and only to druggists and vendors licensed as aforesaid, or to such persons as he has good reason to believe will forthwith carry the same beyond the limits of the county or city, and of any adjoining county or city, in which this Part is then in force and will not carry or send the same or cause the same to be sent or carried into any city or county in which the same is to be dealt with in violation of any provincial law in force in such city or county, to be wholly removed and taken away in quantities not less than ten gallons at a time. 1916, c. 14.

Sales by wholesale merchants and traders.

124. In any prosecution against a producer, distiller, brewer, manufacturer, merchant or trader, for any violation of this Part, it shall lie upon the defendant to furnish satisfactory evidence of having good reason for believing that

Burden of proof of reasons of belief of intention to remove liquor sold.

such liquor would be forthwith removed beyond the limits of the county or city, and of any adjoining county or city in which this Part is then in force, for consumption outside the same, and that such liquor would not be carried or sent into any city or county and dealt with in violation of any provincial law in force in such city or county. 1916, c. 14.

Sales by  
physicians  
and drug-  
gists.

**125.** Nothing in this Act shall be deemed to interfere with the purchase or sale, by legally qualified physicians, chemists or druggists,—

Official  
prepara-  
tions.

(a) of the official preparations of the authorized pharmacopœits when made full medicinal strength and sold only for medicinal purposes;

Patent  
medicines.

(b) of any patent medicine, unless such patent medicine is known to the vendor to be capable of being used as a beverage the sale of which is a violation of this Act;

Perfumery  
and pre-  
parations.

(c) of eau de cologne, bay rum, or other articles of perfumery, lotions, extracts, varnishes, tinctures or other pharmaceutical preparations containing alcohol, but not intended for use as beverages;

Methylated  
spirits.

(d) of methylated spirits for pharmaceutical, chemical or mechanical uses;

Alcohol for  
purposes of  
art, trade  
or manufac-  
ture.

(e) of spirituous liquors or alcohol for exclusively medicinal purposes, or for bona fide use in some art, trade or manufacture: Provided that such spirituous liquor or alcohol when sold for medicinal purposes, shall not exceed in quantity ten ounces at any one time, and shall be removed from the premises, and that the sale thereof is made on the certificate or prescription of a legally qualified physician affirming that such liquor or alcohol has been prescribed for the person named therein; and that when such sale is for the use of the liquor or alcohol in some art, trade or manufacture, such sale shall be made only on a certificate signed by two justices of the peace of the good faith of the application, accompanied by the affirma-

Certificate  
necessary.

tion of the applicant that such liquor or alcohol is to be used only for the purposes set forth in the application.

2. The vendor shall file all such certificates and prescriptions, and shall record every such sale in a book kept for that purpose, giving the name and address of the purchaser, the quantity of liquor or alcohol so sold, the name and address of the physician prescribing it, and of the person for whom it is prescribed, and of the justices whose names are appended to the certificate above referred to, and of the purpose for which the liquor or alcohol is prescribed. Record of sales.

3. The file of such certificates and prescriptions and the said book shall be kept for inspection by the inspector for the county or districts at all proper times. Open for inspection.

4. The vendor shall make an annual return to all such sales on the thirty-first day of December in every year to the collector of Inland Revenue within whose revenue division the county or district is situate. 55-56 V., c. 26, s. 1. Annual return by vendor.

### Offences and Penalties.

126. Any legally qualified physician who gives a certificate under this Part, for any other than strictly medical purposes, affirming that any intoxicating liquor, therein specified, has been prescribed for the person named therein shall on summary conviction, for the first offence be liable to a penalty of twenty dollars and for a second or subsequent offence to a penalty of forty dollars. 51 V., c. 34, s. 5. False medical certificate.  
Penalty.

### PART III.

127. Every one who by himself, his clerk, servant or agent, in violation of Part II. of this Act,— Penalty for violation of Part II.

(a) exposes or keeps for sale, any intoxicating liquor;  
or,

(b) directly or indirectly, on any pretense, or by any

device, sells or barter, or in consideration of the purchase of any other property, gives to any other person any intoxicating liquors; or,

(c) sends, ships, brings or carries, or causes to be sent, shipped, brought or carried to or into any country or city any intoxicating liquor; or,

(d) delivers to any consignee or other person, or stores, warehouses, or keeps for delivery any intoxicating liquor so sent, shipped, brought or carried;

shall, on summary conviction, be liable to a penalty for the first offence of not less than fifty dollars and not more than one hundred dollars or imprisonment for a term not exceeding one month, with or without hard labour, and for a second and every subsequent offence, to imprisonment for a term not exceeding four months with or without hard labour. 6-7 Geo. V. (1916) c. 14.

Second  
offence.

128. If any person who has been convicted of a violation of any provision of Part II. of this Act is afterwards convicted of any offence against such provision, or against any other provision of Part II. such conviction shall be deemed a conviction for a second offence, within the meaning of the last preceding section; and may be dealt with and punished accordingly, although the two convictions may be for acts of different descriptions; and if any such person is afterwards again convicted of a violation of any provision of Part II., whether similar or not to the previous offences, such conviction shall, in like manner, be deemed a conviction for a third offence, within the meaning of the last preceding section, and may be dealt with and punished accordingly. R.S., c. 106, s. 115.

Penalty.

Third  
offence.

Prosecution  
by collector.

129. Any prosecution for any such penalty or punishment may be brought by or in the name of the collector of Inland Revenue within whose official division the offence was committed, or by or in the name of any person. R.S., c. 160, s. 101.



130. Such collector of Inland Revenue shall bring such prosecution, whenever he has reason to believe that any such offence has been committed, and that a prosecution therefor can be sustained, and would not subject him to any undue measure of responsibility in the premises. R.S., c. 106, s. 102.

Obligation to prosecute.

131. Such prosecution may be brought before any judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, sitting magistrate, two justices of the peace, or any magistrate having the power or authority of two or more justices of the peace, having jurisdiction where the offence was committed. 51 V., c. 34, s. 6.

Before whom prosecution may be brought.

132. If any prosecution is brought before any such judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, sitting magistrate, or magistrate having the power or authority of two or more justices of the peace, no other justice shall sit or take part therein. 51 V., c. 34, s. 7.

Other officials not to interfere.

133. If such prosecution is proposed to be brought before any two other justices of the peace, all acts and proceedings prior to the hearing and trial may be done and taken by one of them.

Prosecution before two justices.

2. In such case no justice other than the two justices before whom the prosecution is proposed to be brought shall sit or take part therein, except in the case of their absence or in the absence of one of them; and not in the former, except with the assent of the prosecutor, or in the latter, except with the assent of the one of such justices who is present. 51 V., c. 34, s. 8.

No other justice shall sit.

134. Every such prosecution shall be commenced within three months after the alleged offence, and shall be heard and determined in a summary manner, either upon the confession of the defendant or upon the evidence of a witness or witnesses. R.S., c. 106, s. 106.

Limitation of prosecutions.

135. Every offence against Part II. of this Act may be

Summary conviction.

prosecuted and the penalties and punishments therefor enforced in the manner directed by Part XV. of the Criminal Code so far as no provision is in this Part made for any matter or thing which is required to be done with respect to such prosecution; and all the provisions contained in Part XV. of the Criminal Code shall be applicable to such prosecutions and to the judicial and other officers before whom the same are by this Part authorized to be brought, in the same manner as if they were incorporated in this Part, and as if all such judicial and other officers were named in this Part. R.S. c. 106, s. 107; 51 V., c. 34, s. 9.

Issue of search-warrant.

136. If it is proved upon oath before any judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace, or any magistrate having the power or authority of two or more justices of the peace, that there is reasonable cause to suspect that any intoxicating liquor is kept for sale in violation of Part II. of this Act or of *The Temperance Act of 1864*, or is stored, warehoused, or kept for delivery, in violation of Part II. of this Act, in any dwelling house, store, shop, warehouse, outhouse, garden, yard, croft, vessel, building, or other place or places, such officer may grant a warrant to search such dwelling, house, store, shop, warehouse, outhouse, garden, yard, croft, vessel, building, or other place or places, for such intoxicating liquor, and if the same or any part thereof is there found, to bring the same before him.

Form of information and of search-warrant.

2. Any information under this section may be in form Q and any search warrant under this section may be in form R. 6-7 Geo. V. (1916), c. 14.

Destruction of liquor seized under warrant.

137. When any person is convicted of any offence against any of the provisions of Part II. of this Act, or *The Temperance Act of 1864*, the officer or officers so convicting may adjudge and order, in addition to any other penalty or punishment, that the intoxicating liquor in respect to which the offence was committed, and which has been seized under a search warrant as aforesaid, and all kegs, barrels, cases, boxes, bottles, packages, and other receptacles of any kind whatsoever, found containing the same be forfeited and

destroyed, and such order shall thereupon be carried out by the constable or peace officer who executed the said search warrant or by such other person as may be thereunto authorized by the officer or officers who have made such conviction. 51 V., c. 34, s. 11.

*Necessary Allegations in Proceedings.*

138. In describing offences respecting the sale or other unlawful disposal of intoxicating liquor, or the keeping thereof for sale, in any information, summons, conviction, warrant or proceeding under *The Temperance Act of 1864*, or under this Act, it shall be sufficient to state the unlawful sale, barter, disposal or keeping of intoxicating liquor simply, without stating the name or kind of such liquor, or the price thereof, or the name of any person to whom it was sold, bartered or disposed of; and it shall not be necessary to state the quantity of liquor so sold, bartered, disposed of or kept, except in the case of offences where the quantity is essential, and it shall then be sufficient to allege the sale or disposal of more or less than such quantity.

Description  
of offences.

2. It shall not be necessary, in any such summons, conviction, warrant or proceeding, to negative the circumstances, the existence of which would make the act complained of lawful, but upon any such circumstances being proved in evidence, the defendant shall be acquitted.

Alleging a  
negative.

3. The provision of the last preceding subsection as to manner of statement of an offence shall apply, whether such circumstances are stated by way of exception in the section under which the offence is laid, or in a substantive section, or otherwise. R.S., c. 106, s. 110.

Provision  
applies to  
all cases.

*Proof.*

139. When in any house, shop, room or other place in any county or city in which Part II. of this Act or in which any prohibitory by-law passed under the provisions of *The Temperance Act of 1864*, is in force, a bar, counter, beer pumps, kegs, or any other appliances or preparations similar to

Liquor in  
premises  
where bar  
is found  
deemed to  
be kept for  
sale.

those usually found in taverns and shops where intoxicating liquors are usually sold or trafficked in, are found, and intoxicating liquor is also found in such house, shop, room or place, such liquor shall be deemed to have been kept for sale contrary to the provisions of Part II. of this Act or of *The Temperance Act of 1864*, as the case may be, unless the contrary is proved by the defendant in any prosecution; and the occupant of such house, shop, room or other place shall be taken conclusively to be the person who keeps therein such liquor for sale. 6-7 Geo. V. (1916) c. 14.

Occupant deemed the keeper.

140. In proving the sale or barter or other unlawful disposal of liquor for the purpose of any proceeding relative to an offence under *The Temperance Act of 1864*, or under this Act, it shall not be necessary to show that any money actually passed or that any liquor was actually consumed, if the justices, magistrate or other officer or court hearing the case is satisfied that a transaction, in the nature of a sale or barter or other unlawful disposal, actually took place. R.S., c. 106, s. 112.

Passing of money or description of liquor need not be proved.

141. In any prosecution under *The Temperance Act of 1864* or under this Act, for the sale or barter or other unlawful disposal of intoxicating liquor, it shall not be necessary that any witness should depose directly to the precise description of the liquor sold or bartered, or the precise consideration therefor, or to the fact of the sale or other disposal having taken place, with this participation or to his own personal and certain knowledge; but the justices or magistrate or other officer trying the case, so soon as it appears to them or him that the circumstances in evidence sufficiently establish the violation of law complained of, shall put the defendant on his defence, and in default of his rebuttal of such evidence, shall convict him accordingly. R.S., c. 106, s. 113.

Conclusive evidence not necessary.

Rebuttal competent.

142. On the trial of any proceeding, matter or question under *The Temperance Act of 1864*, or under this Act, the person opposing or defending, or the wife or husband of such person opposing or defending shall be competent to give

Wife or husband a competent witness.

evidence in such proceeding, matter or question. R.S., c. 106, s. 114; 51 V., c. 34, s. 13.

*Subsequent Offences.*

143. In case of a previous conviction or convictions being charged,—

Subsequent offence to be first inquired into.

(a) the justices or magistrate or other officer shall, in the first instance, inquire concerning such subsequent offence only, and if the accused is found guilty thereof, and is present when so found guilty, he shall then, and not before, be asked whether he was so previously convicted, as alleged in the information, and, if he answers that he was so previously convicted, he may be convicted accordingly, but, if he denies that he was so previously convicted or stands mute of malice, or does not answer directly to such question, or is not present when found guilty as aforesaid, the justices or police magistrate or other officer shall then enquire concerning such previous conviction or convictions.

(b) the number of such previous convictions shall be provable by the production of a certificate under the hand of the convicting justices or magistrate, or officer, or of the clerk of the peace, without proof of signature or official character, or by other satisfactory evidence;

Number of previous convictions.

(c) a conviction may, in any case be had as for a first offence notwithstanding that there has been a prior conviction or convictions for the same or any other offence.

Conviction in any case for first offence.

2. Convictions for several offences may be made under this Act, although such offences have been committed on the same day; but the increased penalty or punishment hereinbefore imposed shall only be recoverable or be liable to be imposed in the case of offences committed on different days, and after information laid for a first offence. R.S., c. 106, s. 115.

Several offences on same day.

Increased penalty.

Amendment  
of second  
conviction  
if first con-  
viction set  
aside.

144. In the event of any conviction for any second or subsequent offence becoming void or defective after the making thereof, by reason of any previous conviction being set aside, quashed or otherwise rendered void, the justices or magistrate or other officer by whom such second or subsequent conviction was made, may, by summons under his or their hand, require the person convicted to appear at a time and place to be named in such summons, and may thereupon upon proof of the due service of such summons, if such person fails to appear, or on his appearance, amend such second or subsequent conviction, and adjudge such penalty or punishment as might have been adjudged had such previous conviction never existed, and such amended conviction shall thereupon be deemed valid, to all intents and purposes, as if it had been made in the first instance. R.S., c. 106, s. 115.

*Variances, Defects and Amendments.*

Amendment  
of informa-  
tion for  
variance.

145. In the event of any variance between the information and evidence adduced in support thereof, the justices or magistrate or other officer may amend or alter such information, and may substitute, for the offence charged therein, any other offence against the provisions of *The Temperance Act of 1864*, or of this Act, as the case may be; but if it appears that the defendant has been materially misled by such variance, such justices, magistrate or other officer shall thereupon adjourn the hearing of the case to a future day, unless the defendant waives such adjournment. R.S., c. 106, s. 116.

Adjourn-  
ment if  
defendant  
misled.

Variance  
or defect  
not to in-  
validate  
conviction.

146. No conviction or warrant enforcing the same, or other process or proceeding under either of the said Acts shall be held insufficient or invalid by reason of any variance between the information and conviction, or by reason of any other defect in form or substance, if it can be understood from such conviction, warrant, process or proceeding, that the same was made for an offence against some provision of such Act, within the jurisdiction of the justices or magistrate or other officer who made or signed the same, and if there is evidence to prove such offence, and if no greater penalty is imposed than is authorized by such Act: Provided, that the

court or judge, where so satisfied, shall, even if the punishment imposed or the order made is in excess of that which might lawfully have been imposed or made, have the like powers in all respects to deal with the case as seems just as are by section seven hundred and fifty-four of the Criminal Code conferred upon the court to which an appeal is taken under the provisions of section seven hundred and forty-nine of the Criminal Code. R.S., c. 106, s. 117; 55-56 V., c. 29, s. 889. Proviso.

147. Upon any application to quash such conviction or warrant enforcing the same, or other process or proceeding, or to discharge any person in custody under such warrant, whether such application is made in appeal or upon *habeas corpus*, or otherwise, the court or judge to whom such appeal is made, or to whom such application is made in appeal or upon *habeas corpus*, or otherwise, shall dispose of such appeal or application upon the merits, notwithstanding any such variance or defect as aforesaid. Application to quash conviction to be decided upon the merits.

2. Such court or judge may, in any case, amend any such conviction or warrant, process or proceeding, if necessary. Amendment.

3. In all cases in which it appears that the merits have been tried and that any conviction, warrant, process or proceeding is sufficient and valid under this section or otherwise, such conviction, warrant, process or proceeding shall be affirmed, or shall not be quashed, as the case may be; and any conviction, warrant, process or proceeding so affirmed, or affirmed and amended, may be enforced in the same manner as convictions affirmed on appeal, and the costs thereof shall be recoverable as if originally awarded. R.S., c. 106, s. 118. Not to be quashed if merits tried.

#### *Certiorari and Appeal Restricted.*

148. No conviction, judgment or order, in respect of any offence against Part II. of this Act, shall be removed by *certiorari* or otherwise into any of His Majesty's courts of record. Enforcement.

2. No appeal shall be allowed from any such conviction, judgment or order to any court of general sessions or other Certiorari taken away.

No appeal in certain cases.

court whatsoever, if the conviction has been made by a stipendiary magistrate, recorder, judge of the sessions of the peace, police magistrate, sitting magistrate, or any magistrate or officer having the power and authority of two or more justices of the peace.

Except in case of conviction of a medical man.

3. The provisions of this section, taking away an appeal, shall not apply to any conviction made against any legally qualified physician on a charge of having given a certificate under Part II. of this liquor specified therein had been prescribed for the person named therein. R.S., c. 106, s. 119; 51 V., c. 34, ss. 5 and 12.

### *Compounding Offences.*

Compounding offence.

149. Everyone who, having violated any of the provisions of this Act or of any Act in force in any province, respecting the issue of licenses for the sale of fermented or spirituous liquors, or of *The Temperance Act of 1864*, compromises, compounds or settles, or offers or attempts to compromise, compound or settle the offence with any person or persons, with the view of preventing any complaint being made in respect thereof, or if a complaint has been made, with the view of getting rid of such complaint, or of stopping or of having the same dismissed for want of prosecution or otherwise, is guilty of an offence against this Act, and on conviction thereof, shall be liable to imprisonment at hard labour in the common gaol of the county or district in which the offence was committed, for any term not exceeding three months.

Penalty.

Punishment of parties to compromise.

2. Every one who is concerned in, or is a party to the compromise, composition or settlement mentioned in this section, is guilty of an offence against this Act, and, on conviction thereof, shall be liable to imprisonment in the common gaol of the county or district in which the offence was committed, for any term not exceeding three months. R.S., c. 106, s. 120.



*Tampering with Witnesses.*

150. Every one who, on any prosecution under any of the Acts referred to in the last preceding section, tampers with a witness, either before or after he is summoned or appears as such witness on any trial or proceeding under any of such Acts, or by the offer of money, or by threats, or in any way, either directly or indirectly, induces or attempts to induce any such witness to absent himself, or to swear falsely, shall incur a penalty of fifty dollars for each offence. R.S., c. 106, s. 121.

Tampering  
with wit-  
nesses.

Penalty.

151. The forms given in the schedule to this Act, or any forms to the like effect, shall be sufficient in the cases thereby respectively provided for, and, where no forms are prescribed by the said schedule, new ones may be framed in accordance with this Act or with Part XV. of the Criminal Code in so far as the same are not inconsistent with any provisions made in this Act, for any matter or thing required to be done with respect to any prosecution. 51 V., c. 34, s. 14.

Forms to  
be used.

152. This Act shall have and take effect from the passing thereof in every county and city in which Part II. of *The Canada Temperance Act* is then in force, in the same manner and to the same extent as if it had formed a part of the said Act when Part II. of the said Act was brought in force in such county or city: Provided always that offences against the foregoing amendments, if committed before the passing of this Act, shall not be considered violations of Part II. of *The Canada Temperance Act*.

Construc-  
tion of this  
Act as to  
effect.

## 6-7 GEORGE V. (DOM. 1916)

as amended.

*Chapter 19.*

An Act in aid of Provincial Legislation prohibiting or restricting the sale or use of Intoxicating Liquors

[Assented to 18th May, 1916.]

**H**IS MAJESTY, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—

Sending, etc., liquor from one Province to another Province to violate law.

1. Any person who by himself, his clerk, servant or agent, and any person who as clerk, servant or agent, officer or employee of any other person, or of any Government railway or steamship, whether Dominion or Provincial,

(a) shall send, ship, take, bring or carry or cause to be sent, shipped, taken, brought or carried to or into any Province from or out of any other Province, or import into any Province from any place outside of Canada any intoxicating liquor, knowing or intending that such intoxicating liquor will or shall be thereafter dealt with in violation of the law of the Province into which such intoxicating liquor is sent, shipped, taken, brought, carried or imported as aforesaid; or

Manufacturing intoxicants, knowing, etc., that they are to be unlawfully used.

(a1) manufactures any intoxicating liquor knowing or intending that such intoxicating liquor will or shall be thereafter dealt with in violation of the law of the province in which such intoxicating liquor is manufactured; or

Selling liquor to be so sent.

(b) shall sell or cause to be sold any intoxicating liquor, knowing or intending that such intoxicat-

ing liquor will be sent, shipped, taken, brought or carried into any Province from any other Province, or from any place outside of Canada, and thereafter dealt with in violation of the law of the Province into which such intoxicating liquor is sent, shipped, taken, brought, carried or imported as aforesaid;

shall be liable on summary conviction to a penalty for the first offence of not less than one hundred dollars and not exceeding two hundred dollars, or imprisonment for a term not exceeding two months, with or without hard labour, and for a second offence to a penalty of not less than two hundred dollars and not exceeding four hundred dollars, or imprisonment for a term not exceeding four months, with or without hard labour, and for a third and every subsequent offence to imprisonment for a term not less than six months and not more than twelve months, with or without hard labour; and all intoxicating liquors with respect to which any conviction has been had, and all kegs, barrels, cases, bottles, packages or receptacles of any kind in which such liquor is contained, shall, upon such conviction, be forfeited and shall be destroyed or otherwise disposed of in such manner as the court may direct. 6-7 Geo. V, c. 19; 10 Geo. V, c. 21.

Penalty.

Forfeiture.

2. In addition to any other penalties prescribed for a violation of section one of this Act, any person holding a license to carry on the business or trade of a distiller or brewer, issued under the provisions of the *Inland Revenue Act*, who violates the provisions of section one of this Act, or who sells or delivers intoxicating liquor in violation of the law in force in any Province, shall also be liable in any prosecution under this Act, or under such Provincial law, on conviction for a third offence, to forfeit his license and shall thereafter be unable to hold such a license.

Distillers and brewers violating law, forfeiting license, etc.

3. Every one is guilty of an offence and liable on summary conviction to a penalty of not less than fifty dollars and not exceeding two hundred dollars, or to imprisonment for six months, or to both fine and imprisonment, who:—

Liquor packages to have contents marked on them.

7-8 Geo. V,  
c. 30, s. 1  
(Dom.)

(a) sends or ships by any public conveyance to any place in which the sale of intoxicating liquor for beverage purposes is prohibited, any package containing intoxicating liquor not plainly labelled so as to show the actual contents of such package, and the name and address of the consignor thereof; or

Sending  
liquors with  
fictitious  
address.

(b) sends or ships by any public conveyance any package containing intoxicating liquor addressed to a fictitious person, or addressed otherwise than to the actual consignee of such package; or

Receiving  
or carrying.

(c) being a common carrier or the servant or agent of a common carrier or of any Government railway or steamship, whether Dominion or Provincial, knowingly receives for conveyance, carries or makes delivery of any such package; or

Taking  
delivery.

(d) knowingly takes delivery from any common carrier of any such package. 7-8 Geo. V, c. 30, s. 1.

Presumption  
as to knowl-  
edge or  
intention  
of accused.

4. On any prosecution for the violation of section one of this Act the accused person shall be deemed to have known or intended that such intoxicating liquor would be thereafter dealt with in violation of the law of any province in which such liquor was manufactured or of any other province into which such intoxicating liquor was sent, shipped, taken, brought, carried or imported, unless he proves that he had good reason for believing that the intoxicating liquor would only be dealt with in a lawful manner. 10 Geo. V, c. 21, s. 1 (2).

Rebuttal.

Prosecution  
may be where  
intoxicants  
were  
unlawfully  
sent, etc., or  
where ac-  
cused re-  
sides, but no  
prosecution  
against a  
person out-  
side of  
province in  
which he is  
except with  
approval of  
Atty. Gen.  
of province.

“4AA. A prosecution for any offence under this Act may be brought and carried on and a conviction had in the city, town or place to or into which any intoxicating liquor is unlawfully sent, shipped, taken, brought, carried or imported, or in the place where the accused resides, but no prosecution shall be brought in any province against a person not within or residing in such province without the written approval of the Attorney General of such province.” 10 Geo. V, c. 21, s. 2.

4a. A prosecution for any offence under this Act may be brought and carried on and a conviction had in the city, town or other place from which any intoxicating liquor is unlawfully sent, shipped, taken or carried as aforesaid. 7-8 Geo. V, c. 30, s. 2.

Places where prosecutions may be taken;  
7-8 Geo. V, c. 30, (Dom.)  
4a, 4b, 4c, 4d.

“4BB. (1) When any intoxicating liquor is seized and brought before any judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace or any magistrate having the power or authority of two or more justices of the peace, in pursuance of the provisions of this Act, and the consignor or consignee or owner thereof or person entitled thereto or claiming the same cannot be ascertained, and if no person establishes a claim to the possession of such intoxicating liquor within a period of fifteen days after the seizure thereof as aforesaid, or within such extended time as the judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace or magistrate having the power or authority of two or more justices of the peace, may allow, or as may otherwise be allowed by any competent tribunal, then the judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace or magistrate having the power or authority of two or more justices of the peace who issued the warrant in execution of which such intoxicating liquor was seized, or, in the case of death, absence or inability to act of such judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace or magistrate having the power or authority of two or more justices of the peace, any other judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace or magistrate having the power or authority of two or more justices of the peace, may adjudge and declare such intoxicating liquor, together with all kegs, barrels, cases, boxes, bottles, packages, containers and other receptacles of any kind whatever found containing the same, to be forfeited to the Crown.

Forfeiture of liquor, etc., seized under Act and not claimed, etc.

“(2) As soon as any intoxicating liquor and the receptacles containing the same are forfeited to the Crown, the judge

Disposal forfeited liquor, etc.

of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace or magistrate having the power or authority of two or more justices of the peace by whom such forfeiture is adjudged and declared shall immediately transmit to the Minister of Customs and Inland Revenue a notice in writing specifying the quantities and descriptions of the intoxicating liquor so forfeited, and shall order that such intoxicating liquor shall immediately be deposited in a Customs Bonding Warehouse within the province wherein such intoxicating liquor is forfeited as aforesaid, to be disposed of as the Minister of Customs and Inland Revenue may direct." 10 Geo. V, c. 21, s. 3.

4b. If it is proved upon oath before any judge of the sessions of the peace, recorder, police magistrate, stipendiary magistrate, two justices of the peace, or any magistrate having the power or authority of two or more justices of the peace, that there is reasonable cause to suspect that any intoxicating liquor is in any premises or place and that such intoxicating liquor is or has been dealt with contrary to the provisions of this Act, such officer may grant a warrant to search such premises or place, including any Government railway, vehicle or steamship, for such intoxicating liquor, and if the same or any part thereof is there found, to seize and bring the same before him; and when any person is convicted of any offence against any of the provisions of this Act, the officer or officers so convicting may adjudge and order, in addition to any other penalty, that the intoxicating liquor in respect to which the offence was committed, and which has been seized under a search warrant as aforesaid, and all kegs, barrels, cases, boxes, bottles, packages, and other receptacles of any kind whatsoever, found containing the same, be forfeited and destroyed, and such order shall thereupon be carried out by the constable or peace officer who executed the said search warrant or by such other person as may be thereunto authorized by the officer or officers who have made such conviction. 7-8 Geo. V, c. 30, s. 2.

Search  
warrant  
may be  
issued.

Operation of  
Canada  
Temperance  
Act may be  
suspended  
upon  
petition.

4c.—(1) Upon the receipt by the Secretary of State of Canada of a petition, in accordance with the requirements of sections one hundred and eleven, one hundred and twelve

and one hundred and thirteen of *The Canada Temperance Act*, Revised Statutes of Canada, 1906, chapter one hundred and fifty-two, praying for the revocation of any order in council passed for bringing Part II of *The Canada Temperance Act* into force in any city or county, if the Governor-in-Council is of opinion that the laws of the province in which such city or county is situated, relating to the sale and traffic in intoxicating liquors, are as restrictive as the provisions of the said *Canada Temperance Act*, the Governor-in-Council may, without the polling of any votes, by order, to be published in the *Canada Gazette*, suspend the operation of *The Canada Temperance Act* in such city or county, such suspension to commence ten days after the date of the publication of such order and to continue as long as the provincial laws continue as restrictive as aforesaid.

(2) The present section shall apply to petitions already made and upon which no polling has yet taken place. 7-8 Geo. V, c. 30, s. 2.

4d. Repealed, [see 9-10 Geo. V, c. 66, s. 6, 16a (2) Dom. 1919.]

5. The court shall take judicial notice of the statutes and law of the Province into which intoxicating liquor has been or is alleged to have been shipped, taken, brought, carried or imported contrary to the provisions of this Act.

Provincial law to be judicially noticed.

6. For the purposes of this Act the term "intoxicating liquor" shall include all liquor deemed to be intoxicating under the law of the Province into which the liquor was sent, shipped, taken, brought, carried or imported.

What deemed to be "intoxicating liquor."

7. When it is brought to the attention of the Minister of Justice that an offence against any of the provisions of this Act has been committed outside the boundaries of any Province which has enacted legislation prohibiting or restricting the sale of intoxicating liquor, he may, if the evidence put before him be in his judgment sufficient, take such steps as may be deemed necessary to prosecute any person charged with such offence.

Prosecution by Minister of Justice.

Directions  
as to dis-  
posal of  
fines, etc.

8. The Governor in Council may direct that any fines, penalties or forfeitures (or any portion thereof) imposed under the provisions of this Act be paid to any provincial, municipal, or local authority or other person wholly or in part bearing the expense of the prosecution under which such fines, penalties or forfeitures are imposed, or that the same be applied in any other manner deemed best adapted to attain the objects of this Act and to secure its due administration.

“9. Nothing in this Act shall be deemed to forbid the selling or causing to be sold or the manufacture, or the sending, shipping, taking, bringing or carrying or the causing to be sent, shipped, taken, brought or carried into any province from or out of any other province, or the importation into any province from any place outside of Canada, of any intoxicating liquor for sacramental or medicinal purposes or for manufacturing or commercial purposes other than for the manufacture or use thereof as a beverage.” 10 Geo. V, c. 21, s. 4.



# INDEX

---

	SECTION
ACCIDENTS,	
liability of person supplying liquor .....	56
ACCOUNTS,	
examination of by Provincial Inspector .....	62
ACTION,	
not to lie for price of liquor unlawfully supplied .....	57
certain actions at law not to be commenced without } leave of Board .....	151
act or thing forbidden, to be an offence whether so de- clared or not .....	60
ACTS, .....	See Title Page
ADJOURNMENT OF TRIAL,	
upon amendment of information .....	78
ADMINISTRATOR,	
permit to carry on business on death of licensee .....	27
AFFIDAVIT,	
verification of statements in application for license .....	14
purchaser for mechanical and scientific purposes..... } to be made before member of board .....	35
appeal of Bona fides .....	92, 94
ALCOHOL,	
meaning of, defined .....	123
percentage deemed to be intoxicating .....	2
sale for mechanical and scientific purposes .....	35
quantity which may be kept for mechanical and scientific purposes .....	41
purchase by manufacturers .....	121
sale of drugs, patent medicines and perfumes, etc. containing .....	125
presumption of guilt from possession of unauthorized quantity by manufacturer .....	122
meaning of in provision relating to .....	123
sales by druggists, and of patent medicines .....	124
sales of drugs containing,—what permitted .....	129
may be supplied to Government Departments .....	45

<b>ALE,</b>	
limit of quantity which may be prescribed by physician .....	51
<b>AMENDMENT,</b>	
powers of judge on application to quash, etc.....	102
powers of magistrate .....	78
<b>ANALYSIS,</b>	
certificate of government analyst as evidence .....	90
taking samples for .....	127
<b>APARTMENT BLOCK,</b>	
defined .....	2
<b>APOLLINARIS,</b>	
druggist selling liquor with .....	128
<b>APPEALS,</b>	
affidavits of bona fides .....	92, 94
when to lie .....	92
to judge of the county or district court .....	92
procedure .....	92
recognizance by appellant .....	92
liberation of defendant pending hearing .....	92
clerk's fees .....	92
certificate of magistrate with his return .....	92
appeal at instance of Attorney General .....	93, 95
summons for hearing .....	92
order of judge on return of summons .....	92
practice and procedure on appeals .....	92, 95
judge may order re-hearing .....	102a
irregularity of hearing not to invalidate .....	102a
costs .....	92, 93
to divisional court .....	95
grounds for .....	95
certificate of Attorney General .....	95
notice of appeal .....	95
transmitting and certifying papers to supreme court hearing .....	95
<b>APPLICATION FOR LICENSE,</b>	
to be filed .....	13
transmission to board .....	13
verification of statements in .....	14
form of .....	14
security .....	13
publication of notice of .....	17

	SECTION
discretion of board as to granting or refusing .....	6
investigation and report by inspector .....	18
hearing objections .....	20, 22
action by board upon .....	24
made after regular date .....	30
records to be kept of .....	115
 <b>ASSAULTS,</b>	
liability of vendor for injury caused by intoxication ....	56
 <b>ASSIGNEES IN INSOLVENCY,</b>	
exception as to sales by .....	43
 <b>ASSOCIATION,</b>	
sale, etc., of liquor in, prohibited .....	53
 <b>ATTORNEY GENERAL,</b>	
appeal from dismissal order at instance of .....	93
appeals to divisional court on certificate of .....	95
 <b>AUDIT,</b>	
of separate account by officer of License Branch .....	137
 <b>BAR,</b>	
existence of prima facie evidence .....	89
 <b>BEER,</b>	
limit of quantity which may be prescribed by physician	51
 <b>BEER PUMP,</b>	
presence of prima facie evidence .....	82
 <b>BOARD OF LICENSE COMMISSIONERS,</b>	
certain officers to supply information on application ....51c.	(3)
powers of to purchase and sell liquor for medicinal purposes, pages .....	7-11
discretion as to granting or refusing licenses .....	6
powers on hearing of application and objections to licenses .....	22
duty as to enforcing compliance with law .....	61
appointment of inspectors and office staff .....	119
how composed .....	118
tenure of office .....	118
quorum .....	118
jurisdiction, powers and duties .....	118
resolutions of how proved .....	118 (6)
power to take evidence under oath .....	118
may appoint vendors or other persons to import .....	6a
may refuse to supply liquor .....	

	SECTION
BOAT,	
officer may search .....	76
BOND OF LICENSE,	
form .....	15
amount of .....	16
BONDED LIQUOR WAREHOUSE,	
liquor for export sale may be had in .....	46
BREWER,	
prohibition against communication with other premises	30
sales by .....	45
record of sales as evidence .....	48
exemption from business assessment in 1916-17-18 .....	148
BREWERS' LICENSES,	
extension of pending commencement of Act .....	143
BREWERY,	
unlawful consumption of liquor in .....	50
BRITISH PHARMACOPOEIA,	
sale of tinctures, etc., prepared under, protected .....	125
BUSINESS ASSESSMENT,	
licensees not to be liable for in 1916-17-18 .....	148
CANADA TEMPERANCE ACT, Sections of O. T. A. relating to	
municipal councils may aid in enforcement .....	135
county or city to bear expenses of enforcement .....	136
how expenses to be provided and applied .....	136
operation of Act not to be deemed to be interfered with	140
payment of legislative appropriation for enforcement of	
in provisional judicial district .....	138
enforcement of payment of proportion of expenses by	
municipalities .....	136
provision for funds where fines insufficient .....	137
minister may order payment in certain cases .....	138
CANADA TEMPERANCE ACT, Respecting Prohibition,	
part IV, prohibiting importation into Ontario....page	97
order in council (Dom.) bringing Act into	
force .....	page 103
part III, which extends to prosecutions under	
part IV .....	page 107
part II, which by implication is connected	
vitality with part III .....	page 104

## SECTION

interpretation sections .....	page 104
forms for use under .....	page 113
act validating certain proceedings under	
part IV .....	page 102
result of vote on Referendum under .....	page 101
<b>CANCELLATION OF LICENSES,</b>	
discretion of board as to .....	6
on application of license .....	31
by county or district judge .....	32
on default of payment of penalty from corporations ....	108
<b>CANVASSING,</b>	
when unlawful .....	42
<b>CERTIORARI.</b>	
proceedings in lieu of—R.S.O. chap. 56. s. 63 .....	102
notice must be served within thirty days .....	102a
<b>CLUB,</b>	
sale, etc., of liquor in, prohibited .....	53
exemption from business assessment in 1916 .....	148
<b>CLUB LICENSES,</b>	
extension of pending commencement of Act .....	141
<b>COMMENCEMENT OF ACT,</b>	
matters which may be dealt with pending day of .....	149
<b>COMMITMENT,</b>	
of witness refusing to be sworn and to answer .....	112
<b>COMMON CARRIER,</b>	
conveying goods unopened in Ontario .....	43
<b>COMMUNICATION,</b>	
with licensed premises prohibited .....	39
<b>COMPANIES,</b>	
issue of licenses to .....	9
<b>COMPLAINTS,</b>	
duty of officer as to laying .....	64
<b>COMPOUNDING OFFENCE,</b>	
penalty for .....	113

CONSIGNEE OR AGENT,	
proper party to accept delivery .....	70 (10)
CONSTABLE,	
not to be as surety for license .....	15
to be within this Act and liable for assessment.....	64
every inspector to be ex-officio .....	119
CONSTRUCTION OF ACT,	
transactions between persons in Ontario and persons out of Ontario .....	139
after prohibition is in force .....	139a
CONSUMPTION OF LIQUOR,	
evidence of illegal sale .....	83
transactions with persons outside of province .....	139, 139a
CONVICTION,	
certificate to be sent to Board .....	105
forfeiture of liquor to be reported to Board .....	105
forfeiture of liquor upon .....	68
procedure where previous offence charged .....	96
not to be held invalid by reason of variance or inform- ality .....	101
certificate of .....	105
record to be made on license .....	103
records to be kept of .....	115
notice to quash must be served within thirty days .....	102
(see Certiorari)	
CORPORATIONS,	
to be subject to provisions of Act .....	106
service of proceeding upon .....	107
recovery of penalty from .....	108
cancellation of license of .....	108
COSTS,	
powers as to magistrate directing payment of .....	100
when to be paid out of appropriation .....	111
indemnification of inspector or other officer against .....	111
COUNTY JUDGE,	
cancellation of license obtained by fraud or on mis- conduct of licensee .....	32
appeals to .....	92

	SECTION
CROWN ATTORNEY, duty as to attending prosecutions .....	65
DEATH OF LICENSEE, permit to executors to carry on business .....	27
DENTIST, right as to keeping liquor for use of patients .....	51
keeping liquor for use, what authorized .....	128
DEPOSITIONS, how to be taken .....	74
DESCRIPTION OF LIQUOR, precise evidence unnecessary .....	86
DISORDERLY HOUSE, cancellation of license for keeping .....	32
DISQUALIFICATION OF LICENSE, after cancellation of license .....	32
DISTILLED LIQUOR, limit of quantity which may be prescribed by physician	51
DISTILLER, prohibition against communication with other premises	39
sales in certain cases not prohibited .....	45
record of sales as evidence .....	48
keeping and serving samples .....	50
sale of alcohol, etc., to manufacturer .....	121
exemption from business assessment in 1916-17-18 .....	148
DISTILLERS' LICENSES, extension of pending commencement of Act .....	143
DISTILLERY, unlawful consumption of liquor in .....	50
DISTRESS, exceptions as to sales under .....	43
warrant of may issue .....	109
DIVISIONAL COURTS, appeals to .....	95

	SECTION
DOCUMENTS,	
production of on prosecution .....	113
DRINKING,	
in unlawful place .....	41
on premises where liquor is unlawfully purchased .....	50
DRUGGIST,	
means registered pharmaceutical chemist .....	2
to keep record of sales .....	36
sale of distilled liquor to, not affected .....	45
application of certain provisions to licensed vendor .....	51
sale under medical prescription .....	51
supplying liquor to minor for medical purposes .....	52
sale of patent medicines by .....	124
sale of essences, tinctures, etc. ....	125a
keeping liquor for sale for medicinal purposes, what authorized .....	128
to allow samples to be taken away for analysis .....	127
records of sales to be kept by .....	128
to be open to inspection by commissioners, inspectors, etc. ....	128
when prescription may be ordered by .....	128 (4)
selling liquor as a beverage in shop .....	128
what sales may be made without certificate .....	
limit of quantity of liquor which may be kept by .....	
indemnification when selling goods in original and unbroken package .....	131
keeping for sale or selling illegally, penalty for .....	132
statement of purchases by, to be furnished to Board .....	133
sale to hospital .....	128
must make returns .....	38
DRUNKENNESS,	
conviction for after two previous convictions .....	(555)
DWELLING HOUSE,	
when same ceases to be private .....	54-55a (13)
ELECTORS,	
right to object to issue of licenses .....	20
EMERGENCY,	
proclamation forbidding possession in case of .....	70a (1918)
ESSENCES AND FLAVORING EXTRACTS,	
sale of .....	125a



	SECTION
<b>EVIDENCE,</b>	
what may be required by board on hearing of applica- tion or objections .....	24
record of sales kept by brewer, distiller or manu- facturer .....	48
immunity for committing offence in order to obtain ...	50
compelling person intoxicated to disclose name of vendor .....	55
proof of consumption of liquor in clubs to be conclusive	53
depositions, how to be taken down .....	74
employment of stenographer .....	74
verification of stenographer's copies .....	74
proving license .....	81
prima facie evidence of sale .....	82
proof of consideration for illegal sale unnecessary .....	83
burden of proof of right to sell .....	85, 87
precise description of liquor unnecessary .....	86
proof of possession as prima facie evidence .....	84
signs and fittings .....	89
certificate of government analyst .....	90
enforcing attendance of witness .....	112
production of documents .....	113
board has power to take .....	118
 <b>EXECUTORS,</b>	
permit to carry on business on death of licensee .....	27
 <b>EXEMPTION FROM TAXATION,</b>	
of standard hotel .....	146
 <b>EXPORTER,</b>	
prohibition against communication with other premises	39
 <b>EXPORT WAREHOUSE,</b>	
see bonded liquor warehouse .....	46
 <b>EXPRESS COMPANIES,</b>	
seizing liquor in transit .....	70
 <b>FATAL ACCIDENTS,</b>	
liability of person supplying liquor .....	141
 <b>FEES,</b>	
extension of license pending commencement of Act ....	141, 143
for vendors license .....	144
 <b>FINES,</b>	
effect of remission of .....	153

<b>FIRE,</b>	
Act to prevent accident by fire in hotels .....	page 125
<b>FIRM,</b>	
issue of licenses to .....	8
<b>FORM,</b>	
of licenses .....	3, 33
of bond licensee .....	15
affidavit of purchaser for mechanical and scientific pur- poses .....	35
of information and complaint .....	61
<b>FORM OF BOND,</b>	
disqualification for suretyship .....	15
recovery of penalty .....	15
acceptance of bond of guarantee company .....	15
amount of .....	16
<b>FORMS,</b>	
for use under O. T. A. ....	pp. 86-96
for use under Can. Temp. Act .....	pp. 113-120
<b>FORFEITURE OF LICENSE,</b>	
on conviction of licensee .....	58
when conviction for second offence operates as .....	99
production of license for cancellation on conviction ....	104
records to be kept of .....	115
<b>FORFEITURE OF LIQUOR,</b>	
upon conviction of keeper of unlicensed premises .....	68
when seized in transit .....	70
liquor taken only to be sold to licensee .....	71
application of proceeds .....	71
<b>FRAUD,</b>	
cancellation of licenses obtained by .....	32
<b>FREQUENTER OF UNLICENSED PREMISES,</b>	
liability of .....	68
<b>GINGER ALE,</b>	
druggist selling liquor with .....	123
<b>GUARANTEE COMPANY,</b>	
bond may be accepted as surety for licenses .....	15

	SECTION
<b>GUARDIAN,</b>	
supplying liquor to minor for medical purposes .....	52
<b>HABEAS CORPUS,</b>	
application to be disposed of on its merits notwithstanding informalities .....	102
<b>HAVING LIQUOR,</b>	
penalty for illegal possession .....	58
persons having illegally, compellable to state where he obtained it .....	55 (3)
<b>HOPS,</b>	
action for price of .....	152
<b>HOSPITAL,</b>	
keeping and using liquor in .....	41
<b>HOTEL,</b>	
what articles may not be sold unless licensed .....	146
licensing after commencement of Act .....	146
<b>HOUSES OF REFUGE,</b>	
industry, etc. ....	41
<b>IMPRISONMENT,</b>	
for offence against certain provisions .....	58, 59, 60
<b>INFORMALITIES,</b>	
when not to effect validity of proceedings on prosecutions .....	102
<b>INFORMATION,</b>	
to be laid within three months .....	61
who may lay .....	61
name of person giving not to be disclosed .....	64
may include several charges .....	75
may include several offences .....	75
particulars to be stated in .....	77
powers as to amendment of .....	78
offence may be charged in the alternative .....	76
<b>INNKEEPERS,</b>	
Act respecting .....	page 122
<b>INSOLVENCY,</b>	
exception as to sales by trustees .....	43

INSPECTOR,	SECTION
meaning of .....	2
not to be interested in licenses .....	12
not to be as surety for licensee .....	15
duty as to publication of notice of application .....	17
investigation and report on applications .....	18
papers in office to be open to inspection .....	19
to give notice of hearing of objections to license .....	21
right to be present at hearing .....	23
duty as to seeing that requirements of Act complied with .....	24
to be present at hearing of application and objections....	23
immunity for offence committed to secure conviction ....	50
duty as to enforcing compliance with law .....	61
duties and powers of, generally .....	63
giving false name and address to .....	68
allowance for expenses when attending court .....	91
quarterly returns of costs and expenses received .....	91
appeal to divisional court by .....	95
duty as to prosecuting for second offence .....	97
indemnification of against costs .....	111
payment over of penalties to .....	110
quarterly report to Board .....	116
register of license to be kept by .....	115
record of application for license .....	115
appointment of .....	119
to be ex-officio constables throughout the Province .....	119
security to be furnished by .....	119
must take oath .....	119
may issue notice of prohibition .....	55a
daily report on cases presecuted .....	116
INTOXICATING LIQUOR,	
what to be deemed .....	2
INTOXICATION,	
fatal accidents caused by liability of seller .....	55
in public place to be an offence .....	55
assault committed under, liability of vendor .....	56
person intoxicated compellable to state where he obtained liquor .....	55
inebriate may be prohibited .....	55a
order may be set aside by judge .....	55a (5a-5b-6)
dwelling house in which inebriate resides .....	55a (13)
intoxicated person may be arrested without warrant .....	55 (4)
INVESTIGATION,	
powers of provincial inspector with regard to local inspectors .....	62
JUDICIAL PROCESS,	
exceptions as to sales under .....	43
JUSTICES OF THE PEACE AND POLICE MAGISTRATES,	
trial of offences before .....	61
may issue order of prohibition .....	55a
cannot remit penalties .....	114

	SECTION
<b>KEEPING FOR SALE,</b>	
when unlawful .....	40
exemption from prosecution not to be given for .....	50
in clubs, etc., prohibited .....	53
presumption of illegality .....	67
by Druggists when authorized .....	128
<b>LABELS,</b>	
application of false .....	40d
<b>LAW ENFORCEMENT,</b>	
duties of boards and inspectors .....	61
information .....	61
who to try prosecutions .....	61
duties of provincial inspector .....	62
duties of local inspector .....	63
duties of officers as to acting upon information .....	65
right of search .....	66 & 70
search warrant .....	67
seizure of liquor unlawfully kept .....	68
frequenters of unlicensed premises .....	68
return of liquor upon acquittal .....	69
seizure of liquor in transit .....	70
searching vehicles and lands when required .....	70
destruction of liquor .....	70
service and return of summons .....	70
evidence of property .....	70
disposal of liquor forfeited .....	70
restoration to owner .....	70
shipping in fictitious name, etc. ....	70
forfeited liquor to be sold to license holder only .....	70
funds to be set aside for use under direction of Minister .....	117
appointment of inspectors and officers .....	119
security to be furnished by officers .....	119
appointment of officers by municipal councils .....	120
druggist neglecting to furnish sworn statement of purchase .....	133
municipal funds for enforcing Canada Temperance Act .....	135
Canada Temperance Act, provision for funds .....	136
legislative appropriation for enforcement of Canada Temperance Act, how applied .....	138
<b>LEASE,</b>	
terminable in case of tavern or shop on three months' notice of approval of Board .....	145

	SECTION
<b>LICENSE,</b>	
form and effect of .....	2, 33
duration and operation of .....	5
discretion of board as to granting or refusing .....	6
penalty for licensee making unauthorized sale .....	7
issue to partnerships .....	8
issue to companies .....	9
who disqualified from holding .....	10
applications for .....	13
conditions precedent .....	13
transmission of application to board .....	13
verification of statement in application .....	14
security by licensee .....	13
notice of applications .....	17
investigation and report by inspector .....	18
hearing objections to applications .....	20, 21
inspector to see that statutory requirements complied with .....	24
transfer .....	25
removal of licensee .....	25
cancellation on application of licensee .....	31
cancellation by judge of the county or district court....	32
limitations as to quantities .....	34
record of sales under .....	36
liquor not to be drunk on premises .....	41
offence of licensee may be tried by one justice .....	61
proof of .....	81
right to sell under to be proved by defendant .....	87
when second conviction to operate as a forfeiture of ...	99
conviction to be recorded on .....	103
production of for cancellation on conviction .....	104
duty of inspector as to keeping register .....	115
sale of alcohol, etc., to manufacture under .....	121
extension of, pending commencement of Act .....	141, 143
to person and for premises .....	146
 <b>LICENSED PREMISES,</b>	
what to include .....	2
 <b>LIMITATION OF ACTIONS,</b>	
fatal accidents caused by use of liquor .....	55
 <b>LIMITATION OF PROSECUTIONS,</b>	
information to be laid within thirty days .....	61
 <b>LIQUOR,</b>	
transportation of, Act respecting .....	page 82
importation into Ontario .....	6a

## SECTION

meaning of .....	2
when to be intoxicating .....	2
may be kept for first aid purposes in factory .....	41 (4a)
may be kept in room of sick person .....	41
supplying alcohol to Government Departments .....	45
person drinking liquor to excess may be prohibited .....	55
liquor includes alcohol .....	2(f)
when sold for mechanical or scientific purposes, affidavit must be made .....	35
forfeiture of to be reported to Board .....	105
transportation of .....	154
soliciting orders for .....	42, 42a
 <b>LIQUOR LICENSE ACT,</b>	
renewal of existing licenses until September 1916 .....	141
 <b>LOCAL INSPECTOR,</b>	
meaning of .....	2
not to recommend issue where inspector interested .....	12
duties and power .....	63
quarterly report to Board .....	116
appointment of .....	119
 <b>MAGISTRATE,</b>	
meaning of .....	2
not to interfere with one another .....	73
power as to amendment of information, etc. ....	78
appeals from .....	92
to certify conviction to board .....	105
powers as to compelling attendance of witnesses .....	112
cannot remit penalties .....	114
may issue warrant of distress .....	109
 <b>MALSTER,</b>	
assessment for business assessment in 1916 .....	184
 <b>MANUFACTURER,</b>	
prohibition against communication with other premises	39
authority for sale of native wines by .....	44
record of sales as evidence .....	48
permits for purchase of alcohol, etc., by .....	121
purchase and use of alcohol by .....	121
means, manufacturer for sale by wholesale .....	123
monthly statement by .....	121

	SECTION
MANUFACTURER OF NATIVE WINES, meaning of .....	2
MECHANICAL PURPOSES, sale of alcohol for .....	35
quantity which may be kept for .....	41
MEDICAL PRACTITIONER, rights as to prescribing liquor .....	51
supplying minor under orders of .....	52
having liquor in office, etc., quantity allowed.....see note to Sec. ....	51a
medicinal prescriptions, how they may be dealt with ....	51b (1)
persons presenting same illegally may be arrested .....	51b (2)
penalty for same .....	51b (3)
obtaining same illegally .....	51b (4)
MILEAGE, what to be allowed inspector attending court .....	91
MINISTER OF THE GOSPEL, purchasing wine for sacramental purposes .....	128
MINOR, supplying liquor to prohibited .....	52
MORATORIUM, provisions respecting .....	151
MUNICIPAL CORPORATION, when entitled to penalties .....	110
officer appointed by, not to receive any part of fine .....	120
inconsistent by-law not to have effect .....	120a
liable for legal fees .....	65
MUNICIPAL COUNCILS, members not to be as sureties for licenses .....	15
not to remit penalties .....	114
appointment of officers to enforce Act .....	120
NATIVE WINES, authority for sale by manufacturers .....	44
NOTICE, of application for licenses .....	17
of hearing of objections for granting licenses .....	21



OATH OF OFFICE,	
to be taken by inspector, etc. ....	119
OBJECTIONS TO LICENSES,	
duty of inspector as to stating .....	18
hearing of .....	20
OCCUPANT,	
conviction for offence in private dwelling house .....	53
liability, etc., for sale of liquor in club .....	54
return of liquor on acquittal of .....	69
liability of for offence committed on premises .....	84
presumption as to keeping liquor for sale .....	84
OFFENCE,	
may be charged in the alternative .....	76
permitting communicating with licensed premises .....	39
keeping for sale or selling without authority .....	40
keeping of liquor in unauthorized places .....	41
canvassing for orders for liquor unlawful .....	42
sale or purchase for unlawful resale .....	49
immunity in case of innocent sale .....	49
using or consuming liquor unlawfully .....	47
unlawful prescription of liquor by physician .....	51
supplying liquor to minor for other than medical pur- poses .....	52
being intoxicated in public place .....	55
conviction of occupant of private dwelling, effect of .....	54
when to be tried before two justices of the peace .....	61
who may lay information .....	61
officer neglecting to enforce Act .....	64
obstructing officer .....	66
frequented of unlicensed premises .....	68
application of Ontario Summary Conviction Act .....	72
several may be charged in one formation .....	75
sufficiency of description .....	76
procedure where previous conviction charged .....	96
duty of inspector as to prosecuting for second offence ....	97
inspector neglecting to prosecute for second offence .....	87
when one conviction may be made for several .....	98
when second conviction to operate as forfeiture of license .....	99
magistrate to certify conviction to board .....	105
record of conviction on license .....	103
enforcement of penalties against corporations .....	108
compounding, or settling offence .....	113
magistrate, etc., not to remit penalties .....	114
penalty for compounding .....	113
tampering with witness .....	113

against provisions as to sale of alcohol, etc., for manu- facturing purposes .....	121
sale of patent medicine as colourable device .....	126
refusing to furnish samples of patent medicines, etc., for analysis .....	127
selling liquor as a beverage in shop .....	123
druggist keeping for sale or selling illegally .....	132
neglecting to furnish sworn statement of purchase .....	133
<b>OFFICER,</b>	
immunity for offence, committed to secure conviction ....	50
duty as to enforcing compliance with law .....	61
giving false name and address to .....	68
indemnification of against costs .....	111
appointment of .....	119
to be ex-officio constables throughout the Province .....	119
security to be furnished by .....	119
of municipality not to be paid any part of fine .....	120
must take oath .....	119
<b>ONUS OF PROOF,</b>	
where right to sell or give is in question .....	85
<b>ORDER IN COUNCIL,</b>	
bringing Can. Temp. Act into force .....	page 103
<b>ORIGINAL AND UNBROKEN PACKAGE,</b>	
meaning of .....	123
not to be opened while liquor in transit in Ontario .....	43
<b>OWNERSHIP,</b>	
board may require production of evidence .....	24
proof of where liquor found in transit .....	70
<b>PARTNERSHIP,</b>	
issue of licenses to .....	8
every member of firm, etc., to be liable .....	8
<b>PATENT MEDICINES,</b>	
purchase and use of alcohol by manufacturers .....	121
sale of colourable device .....	126
what sales to be deemed legal .....	125
taking samples for analysis .....	127
investigation by Provincial Board of Health .....	126 (3-6)
procedure charging offence, form of .....	126 (2)
<b>PAYMENT,</b>	
recovery back where sale unlawful .....	57

	SECTION
<b>PENALTY,</b>	
license making unauthorized sale .....	7
communication with licensed premises .....	39
canvassing for orders for liquor .....	42
for offence against certain provisions,—amount of .....	58, 59
where no amount specially provided .....	60
neglect of officer to enforce Act .....	64
obstructing officer .....	66
frequenter refusing to answer .....	68
to be recovered under Summary Convictions Act ...a.....	72
inspector neglecting to prosecute for second offence .....	97
costs to be added in addition to .....	100
recovery of from corporations .....	108
payment over and application of .....	110
power to issue distress for .....	109
commitment in default of distress .....	109
magistrates, etc., not to remit .....	114
tampering with witness .....	113
against provisions as to sale of alcohol, etc., for manu- facturing purposes .....	121
sale of patent medicine as colourable device .....	126
refusing to furnish samples of patent medicines, etc., for analysis .....	127
druggist keeping for sale or selling illegally .....	132
neglecting to furnish sworn statement of purchase when remitted conviction to be void .....	132 153
<b>PERFUMES,</b>	
purchase and use of alcohol by manufacturers .....	121
when sales to be lawful although containing alcohol ...	125
<b>PERMITS,</b>	
to manufacture for purchase of alcohol, etc. ....	121
<b>POLICE,</b>	
to be within the Act and liable for enforcement .....	64
<b>POLICE MAGISTRATE,</b>	
trial of offence before .....	61
other magistrates not to interfere at trial .....	73
special powers to Toronto magistrates .....	67a
<b>PORTER,</b>	
limit of quantity which may be prescribed by physician	51
<b>POSSESSION,</b>	
prima facie evidence of offence .....	88

	SECTION
PREMISES,	
duty of inspector as to reporting upon .....	18
transfer or removal of license .....	28
when to be closed .....	25, 37
export sale warehouse not to communicate with others....	40
exemption from prosecution not to be given to keeper or occupant .....	5
unlawful consumption of liquor in .....	50
removal of liquor from .....	49
rights and powers of officers as to searching .....	66
liability of occupant for offence .....	48
records to be kept of .....	115
PREMISES OF LICENSEE,	
communication with other premises prohibited .....	39
liquor not to be drunk upon .....	41
kept in unauthorized places .....	41
native wine not to be drunk on .....	44
restrictions as to export sale warehouse .....	46
PRESCRIPTIONS,	
sale of liquor under .....	51
must show minimum quantity necessary .....	51 (1) (b)
PRESUMPTION,	
where record of sales not kept by brewer, distiller or manufacturer .....	48
PREVIOUS CONVICTIONS,	
proof of .....	96
procedure upon charge .....	96
where convictions subsequently quashed .....	96
PRIVATE DWELLING HOUSE,	
meaning of .....	2
what to be excluded .....	2
conviction of occupant removes exemption .....	54
exception as to innocent consumption of liquor in .....	47
PRIVATE HOSPITALS,	
keeping and using liquor in .....	41
PROCLAMATION,	
bringing into effect Liquor Transportation Act, 1920 .....	page 84
PRODUCTION OF DOCUMENTS,	
enforcing attitude of witness for .....	113

## PROHIBITION,

transaction between persons in Ontario and persons out of Ontario .....	139, 139a
See Can. Temp. Act, Part IV .....	page 97
order in council (Dom.) declaring .....	page 103
vote on .....	page 101

## PROSECUTIONS,

for sale for unlawful resale .....	49
immunity of officers acting to secure conviction .....	50
who to take place before .....	61
application of Ontario Summary Convictions .....	72
for having liquor unlawfully in transit .....	70
appeals from .....	92
procedure where previous convictions charged .....	96
service of proceedings on corporations .....	107
variance and informalities when not to affect validity of proceedings .....	101
proceedings against corporations .....	107
power to issue distress on non-payment of penalty .....	108
payment over and application of penalties .....	108
proceedings where costs cannot be recovered .....	111
form of proceedings .....	111
form of information, etc., in the case of patent medi- cines containing liquor .....	162 (2)

## PROVINCE,

Act not to effect transactions of persons outside of....	139, 139a
importation into forbidden .....	page 98

## PROVINCIAL INSPECTOR,

duties and power .....	62
appointment of .....	119

## PUBLIC AUTHORITIES PROTECTION,

to apply to constables seizing liquor .....	69
---	----

## PUBLIC PLACE,

offence of being intoxicated .....	55
------------------------------------	----

## PURCHASING LIQUOR,

from any person not authorized to sell .....	50
--	----

## QUANTITIES,

limitations as to sale .....	34
minimum in case of native wine .....	44
presumption of guilt from possession of unauthorized quantity by manufacturer .....	122

	SECTION
<b>QUASHING OF CONVICTIONS,</b>	
appeal to appellate division on certificate of attorney general .....	95
application to be disposed of on merits notwithstanding informalities .....	102
<b>RAILWAY COMPANIES,</b>	
seizing liquor in transit .....	70
must keep records of shipments .....	70a (1917)
<b>RECORD,</b>	
kept by brewers, distillers, or manufacturers as evidence	48
entry of deferred delivery .....	48a
<b>RECORD OF SALES,</b>	
to be kept by licensees and druggists .....	36
returns to board .....	38
<b>REFERENDUM,</b>	
result of vote on .....	page 101
<b>REGISTER OF LICENSES,</b>	
duty of inspector as to keeping .....	151
<b>REMISSION,</b>	
of fine, effect of .....	153
of penalties .....	114
<b>REMOVAL OF LICENSE,</b>	
application for permission .....	25
resolutions of the Board, how proved .....	118
<b>REPEAL,</b>	
provisions as to bar receipts .....	142
of present license law,—when to take effect .....	150
<b>REPEAL OF ACT,</b>	
submission of question to electors .....	147
procedure for taking vote .....	147
returns as to result .....	147
when to take effect .....	147
revival of license law upon repeal .....	147
<b>RESALE,</b>	
unlawfully purchasing for .....	49
<b>RESTAURANTS,</b>	
rights and powers of officers as to searching .....	66
municipal licenses not to be granted without consent of board .....	146 (5a)

	SECTION
<b>RETURNS,</b>	
record of sales to be sent to the board quarterly .....	38
quarterly returns by inspector as to costs and expenses received .....	91
officers may take oath in certain cases .....	119 (4)
<b>SACRAMENTAL PURPOSES,</b>	
keeping wine for .....	41
druggist may sell wine for .....	128
<b>SALE OF LIQUOR</b>	
proof of .....	81
includes sales, barter and traffic .....	2
for mechanical or scientific purposes .....	35
records to be kept .....	36
hours of .....	37
by exporter from warehouse .....	46
for unlawful resale .....	49
in clubs, etc., prohibited .....	53
not to be made in clubs, etc. ....	53
recovery of consideration where unlawful .....	57
consumption of liquor to be evidence of .....	83
presence of certain appliances, prima facie evidence of	82
<b>SAMPLES,</b>	
keeping and serving by distiller .....	50
<b>SANITORIUM FOR CONSUMPTIVES,</b>	
keeping and using liquor in .....	41
<b>SCIENTIFIC PURPOSES,</b>	
sale of alcohol for .....	35
quantity which may be kept for .....	41
<b>SEARCH,</b>	
rights and powers of officers .....	66, 70
penalty for obstructing officer .....	66
powers with regard to liquor in transit .....	70
<b>SEARCH WARRANTS,</b>	
issue of, and action upon .....	67
powers of officers acting under .....	67
<b>SECURITY,</b>	
officers enforcing law to furnish .....	119
<b>SECURITY BY LICENSEE,</b>	
filing bond .....	13
conditions precedent to issue of licenses .....	13
application for where license transferred .....	29

	SECTION
SECURITY FOR COSTS,	
on application to judge for cancellation of license .....	32
return of deposit where complaint allowed .....	32
SEIZURE OF LIQUOR,	
when found on unlicensed premises .....	68
while in transit .....	70
where excessive quantities kept by manufacturer, etc. ....	122
SERVICE,	
how effected on corporations .....	107
SHOP,	
exemption from business assessment in 1916 .....	148
SHOP LICENSES,	
extension of pending commencement of Act .....	141
termination of existing lease on three months' notice .....	145
SICK PERSON,	
liquor in room of .....	41 (3) (b)
SIGN,	
when to be prima facie evidence .....	89
SOCIETY,	
sale, etc., of liquor in, prohibited .....	53
SODA WATER,	
druggist selling liquor with .....	128
SOLICITING ORDERS FOR LIQUOR,	
by advertisement .....	42
regulations respecting (see note at end of section) .....	42a
SPECIAL OFFICER,	
immunity for offence committed to secure conviction ....	50
STANDARD HOTEL,	
licensing by Board .....	146
privileges of licensee .....	146
cancellation of license by Board .....	146
taxes on business assessment not to be levied .....	148
STENOGRAPHER,	
employment of at trial .....	74
SUMMARY CONVICTIONS,	
application of provisions as to appeals .....	92
costs on appeals from conviction .....	92, 93



	SECTION
SUMMONS, service and return of in case of liquor seized in transit....	70
TAVERN, exemption from business assessment in 1916 .....	148
TAVERN LICENSE, extension of pending commencement of Act .....	141
termination of existing lease on three months' notice ....	145
TAXES, exemption from of standard hotels .....	146
of licensees from business assessment in 1916 .....	148
TIME, definition of Time Act .....	page 121
TRANSFER OF LICENSE, removal of licensee to other premises .....	25
death of licensee .....	26
permit to executors to carry on business .....	27
application for .....	28
security to apply to new premises .....	29
proof of .....	81
TRANSPORTATION, of liquor under Order-in-Council or Statute (Dom.) .....	154
and importation forbidden. Canada Temper- ance Act, Part IV .....	page 97
Liquor Transportation Act, 1920 .....	page 82
TRIAL, when inspector entitled to mileage and costs .....	91
TRUSTEES IN INSOLVENCY, exception as to sales by .....	43
UNLICENSED PREMISES, search of .....	68
seizure of liquor found on .....	68
taking names and addresses of frequenters .....	68
penalty for frequenting or giving false information .....	68
VALIDATION, of proceedings under Can. Temp. Act .....	page 102
VEHICLE, right of search .....	70

	SECTION
<b>VENDOR'S LICENSE,</b>	
what to include .....	2
hours of sale under .....	37
limitation as to quantity .....	34
<b>VESSEL,</b>	
captain of, liable .....	84 (3)
<b>VETERINARY SURGEONS,</b>	
keeping liquor for use in practice .....	51
what authorized .....	128
<b>WAREHOUSE, BONDED LIQUOR,</b>	
sales for export in .....	46
unlawful consumption of liquor in .....	50
<b>WARRANT,</b>	
issue of for arrest of witness not attending .....	112
<b>WHOLESALE DRUGGIST,</b>	
to keep records of sales .....	36
sale of distilled liquor to not affect .....	45
meaning of .....	123
sale of ethylic alcohol to druggists by .....	134
<b>WHOLESALE LICENSE,</b>	
exemption from business assessment in 1916 .....	148
<b>WHOLESALE QUANTITIES,</b>	
native wines to be sold in .....	44
<b>WINES,</b>	
limit of quantity which may be prescribed by physician .....	51
purchase of by certain manufacturers .....	121
<b>WITNESS,</b>	
compelling person found intoxicated to disclose name of vendor .....	55
exemption from prosecution for unlawful acts .....	50
compelling attendance of before magistrate .....	113
power to summon and enforce appearance of .....	112
penalty for tampering with .....	113





**University of Toronto  
Library**

---

**DO NOT  
REMOVE  
THE  
CARD  
FROM  
THIS  
POCKET**

---

**Acme Library Card Pocket  
LOWE-MARTIN CO. LIMITED**

